

## COMMITTEE WORKSHOP

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Future of Energy Efficiency, )  
Public Benefits Program )  
\_\_\_\_\_ )

ROOM 102

WATER RESOURCES CONTROL BOARD

901 P STREET

SACRAMENTO, CALIFORNIA

TUESDAY, NOVEMBER 16, 1999

10:05 A. M.

Reported by:  
Debi Baker  
Contract No. 150-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 P R O C E E D I N G S

2 10:10 a.m.

3 COMMISSIONER PERNELL: Good morning and  
4 welcome to the California Energy Commission Public  
5 Benefit Program Committee workshop. This will be  
6 our final workshop. And I want to welcome you and  
7 let you know that Commissioner Laurie is on his  
8 way. He will be a little bit late, so I'll be  
9 opening the workshop this morning.

10 We invite participation. If you care to  
11 speak you need to fill out one of these blue  
12 cards, and we'll call you.

13 At this time I'd like to turn the  
14 hearing over to John Sugar, who will give you an  
15 overview of the workshop and then we'll proceed.  
16 John.

17 MR. SUGAR: Thank you, Commissioner. On  
18 behalf of staff I'd like to welcome you to the one  
19 opportunity to comment on staff's draft report.

20 On November 8th staff completed its  
21 draft report to the Commission, or actually the  
22 Efficiency Committee, on the operational plan and  
23 transition plans for the public goods charge  
24 efficiency program report program this was called.

25 The Commission will be completing a

1 report and delivering it to the Legislature at the  
2 beginning of the year per AB-1105, which directed  
3 the Commission to do that.

4 This report is the first document that  
5 we have been able to put out. Although it's  
6 listed as a staff draft report, in a lot of  
7 respects it's the staff final report, because from  
8 here the Committee takes over.

9 This report constitutes the staff's  
10 recommendations to the Committee as to how it  
11 should construct and direct its report which will  
12 then go to the Energy Commission for adoption in  
13 mid December.

14 I'd like to start out with presentations  
15 by the staff team leads, the portions of the  
16 report for which their teams were responsible, to  
17 discuss some of the highlights.

18 For those of you, if you don't have a  
19 copy of the report, both the report and errata  
20 sheets are available at the front door. And  
21 there's also a sign-in sheet. I hope you've been  
22 able to sign in so that if we have questions we  
23 can get back to you.

24 This is an opportunity to present your  
25 comments to the Committee. It's the one formal



1 event which our process has before the Committee  
2 begins work on its version of the public goods  
3 charge efficiency program report.

4 With that I'd like to call on Kae Lewis  
5 to begin discussing the program section of the  
6 report.

7 MS. LEWIS: The first thing I'm going to  
8 mention. I'm going to talk about four points that  
9 came from our particular team, and we were dealing  
10 with program planning issues and goals for the  
11 program.

12 The first point is that the over-arching  
13 goal, or outcome of the PGC program will be costs  
14 of beneficial energy efficiency in California  
15 marketplace.

16 There are more specific goals, two of  
17 which are of interest because they expand beyond  
18 the PGC purpose from its current mission. And  
19 that is to improve electric system reliability and  
20 increase demand responsiveness to electricity  
21 prices.

22 At present the PGC misses the benefits  
23 of activities that increase electric system  
24 reliability or consumer responsiveness to price.  
25 The staff is recommending that we include

1 reliability as a recommended goal because we  
2 foresee short-term reliability supply constraints,  
3 and we want to investigation contributions of  
4 energy efficiency to solving these problems.

5 Also, we suspect that measures that  
6 promote reliability and increase consumer  
7 responsiveness to price, such as interval metering  
8 or billing format changes also facilitate  
9 sustainable results in energy markets. Because  
10 they lead to more informed, intelligent consumer  
11 choices.

12 The second point is program success will  
13 be measured by the growth of competitive industry  
14 providing high quality, energy efficient goods and  
15 services. And increased number of informed  
16 customers demanding these goods and services.

17 The goals will be fulfilled through the  
18 use of sustainability focused and reliability  
19 focused programs.

20 We're introducing the term  
21 sustainability focused for market transformation.  
22 These are programs with long-term marketing-  
23 changing objectives. Reliability focused programs  
24 are directed toward the reliability goals just  
25 mentioned. They have more short-term objectives,

1       and are more amenable to measurement.

2               The third one, the program planning  
3       principles will include first, a market-focused  
4       portfolio strategy, which is a mix of programs  
5       designed to achieve specific market objectives.

6               Second, causal explanations of why  
7       programs should work. This is the development of  
8       program theories up front and program design.

9               The next is to establish feedback early  
10      and often in program design and implementation.

11              And the last one, pilot initiatives. To  
12      incubate new ideas and to reduce the risk of  
13      trying out these new ideas in the marketplace.

14              We are certainly in agreement and we  
15      definitely have learned from the good work that  
16      the PUC has done and the direction that they set  
17      with the CB program design and evaluation.

18              What we're suggesting here are  
19      enhancements which we hope will expand our mixed  
20      programs and provide for improved test marketing  
21      of program ideas.

22              We also realize that we'll need to  
23      operationalize these principles, and that this  
24      will require development of guidelines which  
25      actual program staff and managers should help to

1 develop.

2 The last one is that the PTC  
3 administration structure should support and  
4 reinforce these goals and program planning  
5 principles. And this simply underscores the fact  
6 that the administrative structure must help to  
7 fulfill these goals and implementation principles.

8 As a consequence they impact the  
9 structure and the roles of the participants in the  
10 PTC structure.

11 MR. SUGAR: Mike, if you'd care -- Mike  
12 Messenger, did your slides make it off the  
13 printer? We had some technical difficulties this  
14 morning. Apparently we overcame them.

15 MR. MESSENGER: Good morning. My name  
16 is Mike Messenger. I work here at the California  
17 Energy Commission. I'm really just going to  
18 summarize a number of different recommendations  
19 that are made in the funding and need section.  
20 And I'm assuming that you will all comment after  
21 this report in terms of places where you think we  
22 need to do more work, or places where you  
23 disagree.

24 I basically have four points that I'm  
25 going to go over. One is whether or not there's a

1       need for continued programs. Secondly, what's our  
2       proposed funding level for the program. Third, --

3               PRESIDING MEMBER LAURIE: Michael, can  
4       you use the amplified microphone, please, as well?

5               MR. MESSENGER: Sorry. Can people hear  
6       me now?

7               So, there's basically four points. The  
8       need for the program, the program funding level,  
9       our proposal to establish a natural gas surcharge  
10      to pay for natural gas and electricity energy  
11      efficiency programs. And our proposed scope and  
12      method of funding collection.

13              Other details related to how often the  
14      funds should be -- funding levels should be  
15      reviewed, and how the money is transferred between  
16      the PUC and the -- collected by the utilities and  
17      transferred to the CEC are all in the funding  
18      chapter. And you can comment on those, as well.

19              But I'm just going to stay with these  
20      highlights. First, in terms of the need for  
21      continued programs, we basically looked at four  
22      things.

23              One, the Commission has a model that  
24      tries to estimate the remaining potential for both  
25      existing and emerging energy efficiency

1 technologies. And based on the results of that  
2 analysis we concluded that there was significant  
3 potential remaining that could be picked up by  
4 these programs.

5 Second, based on a review of the market  
6 assessment and evaluation studies that have been  
7 completed over the last two years, there still  
8 continues to be market imperfections that are  
9 preventing the private market from fully  
10 exploiting all of this potential, and we believe  
11 that programs are a way of trying to harness the  
12 market to reach that potential.

13 Third, we believe that there is a  
14 potential for some of these programs to contribute  
15 to mitigating or reducing what a lot of people are  
16 predicting are going to be reliability problems  
17 this summer and next summer.

18 And given that AB-1890, one of the  
19 reasons that public goods charge programs were  
20 started in the first place was to deal with  
21 potential reliability programs, we think it would  
22 be at least useful to look into funding some  
23 programs in this area and seeing if they could  
24 actually help mitigate reliability problems.

25 And third, based on both results

1 reported by the utilities to the PUC and some of  
2 our own analysis, we believe that there still  
3 could be significant net public benefits generated  
4 by continuing the programs, i.e., \$2 in benefits  
5 for every \$1 of cost is roughly what we're  
6 estimating.

7 Next slide. In the report we go through  
8 a sector-by-sector analysis of what funding levels  
9 we think are appropriate, and in that process in  
10 the report, our analysis process, we review the  
11 results from the last two or three years of  
12 benefit/cost ratios and various other kinds of  
13 evaluations of existing utility programs.

14 In many cases there has not been a  
15 complete evaluation of whether or not these  
16 programs are, in fact, achieving market effects,  
17 or significant ones. But in most cases there are  
18 some benefit/cost ratios presented that gave us  
19 the comforting belief, at least, that benefits  
20 exceed the costs in most of these programs.

21 And so while we're a little bit hesitant  
22 to recommend a full level of funding in some areas  
23 because the evaluations hadn't been complete, we  
24 thought there was enough evidence to suggest that  
25 we can go forward and redesign the programs, if

1       necessary, if for some reason they're not  
2       achieving their market objectives.

3               In terms of reliability focus, we  
4       reviewed past funding levels for load management  
5       programs, and also for some innovative programs  
6       designed to increase customers' responsiveness to  
7       prices. We recognize that it's still unclear  
8       whether or not the customers are actually ever  
9       going to have to pay time-of-use prices.

10              That's a subject that's being debated at  
11       the PUC right now in terms of when, or if  
12       residential customers should ever actually pay  
13       things like, you know, 20 cents a kilowatt hour on  
14       a peak afternoon in the summer. But we think that  
15       eventually customers will have to face those  
16       prices, and it's a good idea to help plan for that  
17       so that they have some options in terms of  
18       responding to them.

19              Finally, we reviewed the history of sort  
20       of what's been spent in evaluation on these types  
21       of programs, and the report talks about a range of  
22       funding levels everywhere from the current low of  
23       12 million to the high of 53 million that was  
24       spent on a yearly basis trying to evaluate these  
25       programs.



1                   And we came out with an assessment of at  
2           least as a starting point we think that \$20  
3           million would be a good funding level for  
4           evaluation, both in terms of evaluating the  
5           success of the programs, as well as trying to  
6           evaluate the success of the proposed  
7           administrative structure, whether it's actually  
8           working.

9                   One of the innovations that David will  
10          talk about later is that we really think there's a  
11          need for some independent body to review the whole  
12          system, and not just rely on the governance body  
13          to self-report to the Legislature that  
14          everything's fine. And so we're going to be  
15          proposing an independent body to do that.

16                  Finally, we've made some estimates of  
17          how much we think the governance contract  
18          management, administration and independent review  
19          will cost. Roughly \$3 million is our current  
20          estimate. And I think that's roughly comparable  
21          to all the costs if you were to count how much the  
22          CPUC currently costs to oversee this system.  
23          We've counted the salaries of the employees and  
24          that type of thing.

25                  So our grand total is \$294 million that

1 we're recommending in terms of a funding level.  
2 And just for comparison, the authorized level, not  
3 including governance and administration, because  
4 we can't count that exactly, was roughly \$276  
5 million last year in 1999.

6 So we're recommending a slight increase.  
7 And most of that increase again is based on this  
8 possibility that reliability focused programs may  
9 be helpful to the ISO dealing with potential  
10 reliability problems.

11 Next slide, please. We still continue  
12 to believe that it's most equitable for customers  
13 to establish a natural gas surcharge and not to  
14 have electricity customers essentially foot the  
15 bill for programs that are saving both electricity  
16 and natural gas.

17 We're proposing that the Commission work  
18 with the Legislature to try to work out a bill  
19 that would do this using CPUC jurisdictional  
20 customers as the base.

21 We recognize that previous bills in the  
22 last couple of years haven't succeeded in getting  
23 passed by the Commission, so this is going to be  
24 an uphill fight. But we still continue to  
25 recommend that this is the right thing to do.

1                   Next slide, please. Final slide on the  
2                   scope of method of funding collection. We  
3                   continue to believe that the right mix is all CPUC  
4                   jurisdictional customers for electricity and  
5                   natural gas. And to continue with the current  
6                   mechanism that asks municipal utilities to fund  
7                   roughly the same level of effort in terms of a  
8                   percentage of their revenues for electricity, for  
9                   energy efficiency, RD&D and low income programs.

10                   One thing we are recommending, as an  
11                   aside, is that the municipals report to some  
12                   central reporting agency, and we're right now  
13                   recommending us, in terms of what they spend and  
14                   what they think they save, just so that we can  
15                   have some information to provide to the  
16                   Legislature on what's being done statewide. Right  
17                   now there's sort of a gap in our knowledge of  
18                   what's happening in the municipal sector.

19                   And it would help to coordinate, if  
20                   there are going to be statewide programs as we're  
21                   proposing, other places, give the munis a way to  
22                   coordinate if they wanted to on a voluntary basis  
23                   in statewide programs.

24                   And just to give you an idea of how much  
25                   money is necessary to raise this \$294 million, we

1 think there are two options that the Legislature  
2 could choose. Well, actually there's more than  
3 two, but the ones that we're recommending are that  
4 if you want to do it all from electricity, you  
5 just have a uniform charge statewide of 1.7 mills  
6 per kilowatt hour, and don't worry about changing  
7 that up or down, just collect it on the yearly  
8 basis. And that will go up and down depending on  
9 how sales go.

10 Or, if we are successful in getting a  
11 natural gas surcharge passed, you could reduce  
12 that to 1.4 mills per kilowatt hour for  
13 electricity and 4.6 mills per therm for natural  
14 gas.

15 And that's our recommendations.

16 MR. SUGAR: Thank you, Mike. Mike Sloss  
17 for the administrative section.

18 MR. SLOSS: Thank you, John. Good  
19 morning, everyone, I'm Mike Sloss from the  
20 Commission Staff.

21 In presenting the overview of the  
22 administrative structure, I am going to summarize  
23 what's in the report.

24 The administrative structure, as you  
25 know, has five functions that we've identified

1       that should be components of any administrative  
2       organization.

3               Three of those require some attention to  
4       the definitions so we make sure that we  
5       understand, among ourselves, what we're talking  
6       about.

7               First is program governance and  
8       oversight. Program governance and oversight  
9       involves principally the setting of broad policy,  
10      budget and oversight functions, and developing the  
11      criteria and selecting the program administrators.

12              And next comes the program  
13      administration functions. What we view in this  
14      particular level of the administrative structure  
15      are extremely important functions that include  
16      assessing markets, determining target market  
17      areas, developing strategies for addressing  
18      barriers or issues that exist in the market.  
19      Designing programs to address those market  
20      barriers or market activities. And selecting the  
21      implementers that will actually carry out the  
22      programs.

23              We had some discussion where there was a  
24      view that the administrators -- administrative  
25      level really represented a funnel for the money to

1 go through from governance to the actual  
2 implementers, and this is not the case. This is  
3 where some real analytical work in terms of what  
4 the markets require will take place.

5 And the third definition of one of the  
6 levels is that of the implementer. The  
7 implementers will be selected by the  
8 administrators and will actually deliver the  
9 services in the market as directed by the  
10 administrators under contract.

11 Recommended administrative structure  
12 shown on page 53 of the report, if you have it in  
13 front of you, we analyze several options. For  
14 example, for governance, we looked at options of  
15 creating a new agency like an energy efficiency  
16 authority. Or having an existing governmental  
17 agency, such as the Energy Commission, carry out  
18 that function.

19 It is our view that based upon the  
20 existing authority and charter of the Energy  
21 Commission, that it's appropriate for the  
22 Commission to carry on the function of the  
23 governance of these programs.

24 For administrators we recommend that  
25 administrators would be chosen through

1       fundamentally a competitive process. For the  
2       market areas that are -- the current market areas,  
3       which may change, the market areas shown right now  
4       are residential, nonresidential, new construction,  
5       innovative and reliability. And those may -- we  
6       are thinking that we may have as few as three, or  
7       as many as eight of those administrative areas.

8               Those administrators would be chosen, as  
9       I said, through some kind of a competitive process  
10      eventually.

11             Through the years 2002 and 2003 the  
12      utilities would be the administrators for the res,  
13      nonres, and new construction markets so that we  
14      can maintain services in those areas and give  
15      ourselves a chance to get organized for future  
16      programs.

17             The nonresidential markets and the  
18      innovative markets would -- sectors would, in  
19      fact, be bid out in some fashion from the  
20      beginning. After 2002 to 2003 all markets would  
21      be competitive. Utilities could bid to  
22      participate, continue participation in the res,  
23      nonres and new construction markets, but would not  
24      be allowed to bid on the nonresidential markets or  
25      the innovative markets because of what the staff

1 view are conflict of interest issues that have to  
2 do with customer retention versus energy savings.  
3 And the fact that in those markets there may be an  
4 unfair competitive advantage for the UDCs.

5 For program implementation that would be  
6 open for any bid, any competition, any entity,  
7 nonprofit, for profit, UDCs. Our one caveat is,  
8 as I say, we don't believe that it would be  
9 reasonable to have an administrator grant an  
10 implementer contract to one of their affiliates  
11 unless there was no practical option for that  
12 particular action.

13 Another two functions that are shown on  
14 the chart that I didn't discuss earlier are the  
15 evaluation functions, which shows on the chart as  
16 a CDC function, probably to be contracted out.  
17 And that function would be responsible for the  
18 continued real time evaluation of programs, the  
19 contracting process, the administrative process,  
20 and of the governance to insure that we are  
21 carrying out the intent of the law, and carrying  
22 out the intent of the strategic plan that the  
23 Commission would adopt initially in the process.

24 The independent review we envision as  
25 panel that would be selected probably by the



1 Commission and the Legislature to provide a longer  
2 term view and evaluation of the effectiveness of  
3 the program and provide direct input to the  
4 Legislature on whether or not an administrative  
5 structure is achieving its goals.

6 That's it.

7 MR. ABELSON: I just have one comment or  
8 clarification on Mike's presentation. With regard  
9 to the role of the utilities as program  
10 administrators in the three areas that he  
11 indicated, that is the proposal as a presumption,  
12 but there is a recommendation in the staff report  
13 that that be subject to a procedure by which  
14 parties who are concerned about effectiveness or  
15 conflict of interest have an opportunity to  
16 present their case, the utilities have an  
17 opportunity to present their position that those  
18 are not insurmountable problems.

19 So there is that little wrinkle on that  
20 one part that I just wanted to clarify.

21 MR. SUGAR: Okay. I'll present the last  
22 part, the transition plan report.

23 The legislation asked us to address a  
24 number of issues related to the transition of the  
25 program from the Public Utilities Commission to

1       whatever entity we'd recommend take the program  
2       on.

3               The three areas which I'm covering in  
4       today's comments are the oversight and  
5       responsibility questions, implementation and  
6       sequencing in the transition, and the resource  
7       requirements.

8               The legislation also asked us to discuss  
9       coordination between the efficiency program and  
10      other PUC programs during the transition. That  
11      basically discusses what the Energy Commission is  
12      currently doing, participating in the CPUC's  
13      processes.

14              The transition oversight and  
15      responsibility, the first item that we cover is a  
16      strategic plan. The goals in the strategic plan  
17      include refining the program goals, developing a  
18      revised standard practice manual for program  
19      planning and evaluation, and a review of the  
20      existing programs. This document is necessary to  
21      help guide the program as we start up through the  
22      transition.

23              The process must also develop  
24      information on potential in the various market  
25      areas, that's the second point there, developing

1       program information for decision makers to assist  
2       the Commissioners, or whoever is deciding on  
3       program levels, to determine how funding should be  
4       allocated among market areas.

5               We need to build in administrative  
6       flexibility. The Commission must propose  
7       legislation to provide administrative flexibility.  
8       This would include exemptions from the  
9       Administrative Procedure Act and the Public  
10      Contracts Code.

11             The renewables program provides a good  
12      model for a system that allows the Commission to  
13      focus more on results than the minutiae of the  
14      administrative process. So we're looking to that  
15      as sort of a model on which we intend to build.

16             We need to insure oversight and  
17      accountability. The staff is proposing regular  
18      audits, similar to those that are going on in the  
19      renewables program, and the independent review of  
20      the program process and results, which Mike Sloss  
21      just discussed. That's similar to the one used in  
22      the PIER program. These would also be included in  
23      the legislation to help insure the integrity of  
24      the public funds used for this efficiency effort.

25             The implementation and sequencing, the

1 overall sequencing is quick. The two years  
2 between the delivery of this report to the  
3 Legislature and the end of the transition period  
4 is short.

5 We're assuming that strategic planning  
6 and market analysis should begin early next year,  
7 probably in March. Legislation would need to be  
8 developed. Staff would begin working on that  
9 quite soon, and begin publicly in February through  
10 April working to have the legislation enacted. It  
11 needs to establish a trust fund and a fund  
12 transfer mechanism. Needs to have the elements to  
13 insure the administrative flexibility. And needs  
14 to have elements which establish the independent  
15 auditing and review.

16 Staff would begin work on the -- sort of  
17 the groundwork on developing contract language at  
18 the beginning of the fiscal year in July 2000,  
19 planning on releasing initial contract documents  
20 very early in 2001.

21 The primary goal of the transition plan  
22 is to avoid any disruption to or hiatus in ongoing  
23 programs. And so in laying this out that is our,  
24 sort of the driving consideration.

25 Next slide, please. The resource

1 requirements that we've identified to date are  
2 based on a staff dedicated to the PGC efficiency  
3 program. These are the individuals who'd be  
4 working on this program, would not be available  
5 for their Commission activities.

6 The staff would include the  
7 administrative and legal staff that are necessary  
8 to implement the program. Again, to insure that  
9 all the resources necessary are available when  
10 they are needed.

11 For 2001 we're assuming that it would  
12 take approximately 12 positions for the first  
13 portion of the transition process. We're assuming  
14 that there would be a couple of permanent  
15 redirections, but need at least ten new positions.

16 Actually, the project would begin with  
17 all redirections because it does take awhile to  
18 get the permission to hire.

19 We're also assuming we would need a  
20 technical services contract of up to \$300,000.  
21 And that would probably last more than one year.  
22 But we would initiate it next year.

23 Next slide. Discussing the 2001  
24 estimate, we're assuming, right now the number is  
25 kind of soft, an additional 15 positions to help

1 with the contract management. A lot of these  
2 would be dedicated to evaluation management, and  
3 then we would be staffing the independent review  
4 process.

5 In the larger scheme of things, the  
6 resources which we are discussing are  
7 approximately the resources that are being used  
8 for the renewables program. The renewables  
9 program spends about \$136 million a year. It's a  
10 fairly straightforward effort. There is less  
11 planning and evaluation involved than we believe  
12 is going to be necessary for the PGC efficiency  
13 program.

14 We are estimating staff will be about  
15 half the staff that are allocated to the PIER  
16 program. In many ways this program, we expect to  
17 be somewhat less complex than trying to develop  
18 the research and development program that the  
19 Commission is currently managing.

20 And with that comment, if I could turn  
21 this back to the Committee.

22 PRESIDING MEMBER LAURIE: Thank you, Mr.  
23 Sugar. Commissioner Pernell, do you have any  
24 initial questions at this point?

25 COMMISSIONER PERNELL: Actually, I do.

1       Let me ask you, Mr. Sugar, about the resources  
2       that you just outlined, as soon as I find my  
3       questions here.

4                   You talked about, let me just ask you,  
5       is there any money in the second year? You  
6       mentioned that there's some funds in the first  
7       year for this transition and so is there any funds  
8       in the second year? I mean is the fund structure  
9       laid out in such a way that we will have adequate  
10      funds to do the transition and run the program?

11                   MR. SUGAR: We would have to either  
12      through legislation or contact with the Public  
13      Utilities Commission we will have to request the  
14      transfer of some PGC funds in the first year to  
15      begin the process. And that money probably will  
16      not be available until July when a fund could be  
17      established in the treasury.

18                   We'll probably be requesting  
19      approximately \$1 million for the first year. The  
20      second year request, as we see what our financial  
21      position is, the second year request is maybe  
22      approximately the same. I don't anticipate we  
23      would be able to spend that entire amount in the  
24      first year.

25                   COMMISSIONER PERNELL: So, you don't

1       have zero for the second year? I am looking at  
2       this report. Do you have a figure for the second  
3       year in here?

4               MR. SUGAR: I don't believe so.

5               COMMISSIONER PERNELL: So am I to assume  
6       that's zero?

7               MR. SUGAR: No. It's more than zero. I  
8       can't speculate on how much we would be requesting  
9       for the second year.

10              COMMISSIONER PERNELL: Okay, but it's  
11      open, so that -- what I don't want to do is cut  
12      our resources off in the second year and someone  
13      in the Legislature assume it's zero.

14              So I guess my question is are we leaving  
15      that open not knowing exactly how much that will  
16      be, but it will be something?

17              MR. SUGAR: It will be something. And  
18      we do need to make that clear, because without  
19      additional resources this program will be a  
20      significant drain on other Commission activities  
21      if it were to come to the Energy Commission.

22              MS. TEN HOPE: When you're talking about  
23      resources are you talking about PY exclusively?

24              MR. SUGAR: The largest amount of  
25      funding will be for PY. At the moment we're



1       assuming that a \$300,000 technical services  
2       contract would carry us through the transition  
3       process.

4               MS. TEN HOPE: One time only. So that's  
5       the first year is --

6               MR. SUGAR: Well, you know, one time  
7       through the transition process. It may carry us  
8       through the first year and a half to two years.  
9       This is an area in which we have not been involved  
10      before. We figure that a technical services  
11      contract of \$300,000 would get us well down the  
12      road, will give us time to see what happens in the  
13      second year.

14              Given the amount of time that it takes  
15      to bring staff on in state government, we assume  
16      that we will be using redirected staff for some  
17      time, which is why I estimate that the million  
18      dollars would probably carry us through more than  
19      the first year.

20              A lot of the expense revolves around how  
21      long it takes to fill positions --

22              MS. TEN HOPE: Can money be transferred  
23      between PY and technical assistance because it  
24      seems if we have delays in hiring you want more  
25      technical assistance, if you have staff on board,

1       you might need less. That you want the  
2       flexibility to move back and forth between those?

3               MR. SUGAR: We do. And for the second  
4       year I can't, in good faith, give an estimate of  
5       what it will cost. If we're able to hire people  
6       more quickly the technical services funds would  
7       last longer than otherwise.

8               COMMISSIONER PERNELL: And so just for  
9       my clarification on it, would you run through the  
10      PYs again for me? We're not -- run through that  
11      one more time so I can be clear on it.

12              MR. SUGAR: We're estimating that for  
13      the first year the work will entail 12 PY. We  
14      will have to begin with redirected staff, and then  
15      as the new fiscal year starts and hopefully we are  
16      allocated new positions, I'm estimating that we  
17      should be able to hire up to ten additional staff  
18      with a couple of redirections from inside our  
19      division.

20              I see Scott grimacing at that.

21              MR. MATTHEWS: No, I just want to make  
22      it clear that you won't necessarily see in the  
23      work planning process that we're going to bring --  
24      management, this is all internal CEC stuff, so the  
25      rest of you can go to sleep for a second --

1       because some of the -- we're spending about 12 PY  
2       on the program now with people like John Sugar and  
3       John Wilson and yourselves and me and everybody  
4       that's in the management don't get counted to a  
5       program cost.

6               So, it'll be 12 PY worth of effort, but  
7       when you get to the accounting you may not see it,  
8       we may not -- of the budget change proposal for 12  
9       additional positions. That's the kind of detail  
10      that we're still, you know, we haven't -- we're  
11      still -- but we want to give to the stakeholders a  
12      feeling of the order of magnitude that we see the  
13      Energy Commission Staff being dedicated to do this  
14      work.

15             And so I know a lot of people think, oh,  
16      this is going to be a 200 PY effort, and if you  
17      took the PIER program and multiply it times four,  
18      that's what you would come up with. We're not  
19      going to run it that way. And these numbers  
20      indicate what we have in mind for how we think the  
21      administration ought to be conducted.

22             And so right now we've redirected all  
23      the staff to this, because we don't have any  
24      program, other than -- the energy efficiency  
25      division doesn't have any PGC funding to run this

1       program. We're using ERPA funding fundamentally  
2       to do it.

3               COMMISSIONER PERNELL: Okay, my concern  
4       is simply that we have the resources to do a good  
5       job with the program. And now's the time to talk  
6       about it. So, I'm not concerned that we're over-  
7       staffed. I'm concerned that we have the necessary  
8       resources it takes to do this program and do it  
9       effectively.

10              And you're telling me we do?

11              MR. SUGAR: I'm telling you we are  
12       asking for it.

13              COMMISSIONER PERNELL: Okay, so we got  
14       year one and two, is that --

15              MR. SUGAR: But --

16              COMMISSIONER PERNELL: Are there any  
17       others that you --

18              MR. SUGAR: -- during the transition we  
19       assume that our request would be to staff up to  
20       operate the program, and we would not expect to be  
21       requesting for additional staffing.

22              There may be additional tech support  
23       contract requests. It's too early to estimate.  
24       But the staffing that we're estimating we need  
25       during the transition would put us in a position

1 to operate the program with sufficient resources  
2 to make it work.

3 Again, our goal is that there isn't  
4 disruption or a hiatus. We're trying to stage  
5 this to insure that the program continues without  
6 a pause.

7 COMMISSIONER PERNELL: Good. That's all  
8 I have for that.

9 PRESIDING MEMBER LAURIE: A follow-up  
10 question on staffing, John. Talk to me a little  
11 bit about the methodology that you use in  
12 developing a PY estimate.

13 Is there a book that tells you, you  
14 know, the x and y axis, and it gives you some  
15 number? Is there a state mandated methodology?  
16 How do you come up with your numbers?

17 MR. SUGAR: I wish there was a handbook.  
18 I looked for one and we seem to be pretty short on  
19 that.

20 I've spoken with both our legal staff in  
21 the administration division, and then with staff  
22 that are working on this stage of the project.

23 Our conclusions are that to start this  
24 program we need two dedicated administrative staff  
25 to develop contracting processes, and the fiscal

1 mechanisms that we need.

2 We need an attorney to assist us first  
3 with the legislation. And then if the legislation  
4 is successful, to insure that the system of  
5 guidebooks and regulations we develop to operate  
6 the program are appropriate, fit within our state  
7 mandate.

8 Looking at developing both the strategic  
9 plan, evaluating existing programs, and then  
10 providing analytic assistance to developing the  
11 contract documentation, it looks like we probably  
12 need eight or nine staff to undertake those  
13 efforts, broken up into about three groups.

14 When we start the program it appears  
15 we'll need some additional staff, particularly in  
16 the evaluation area. That's for the second year,  
17 and that estimate is softer than our first year's  
18 estimate.

19 PRESIDING MEMBER LAURIE: Okay.  
20 Question on the administrative structure, Mr.  
21 Sloss, Mr. Abelson.

22 There is continued reference in the  
23 elements of the document dealing with the  
24 authority or the nonprofit that talk about the  
25 challenges in setting up such an entity.

1 I think there's a reference to  
2 controversial, complex and many references to  
3 delay.

4 Let me ask probably Mr. Abelson, David,  
5 if you were an attorney in private practice and I  
6 walked into your office and said, Mr. Abelson,  
7 here's \$10,000, I need to set up a nonprofit  
8 corporation forthwith.

9 How long is this going to take you?  
10 Would you be able to respond to that?

11 MR. ABELSON: Well, as an attorney, I  
12 undoubtedly would push the meter and immediately  
13 start thinking of some --

14 PRESIDING MEMBER LAURIE: Absolutely.  
15 (Laughter.)

16 PRESIDING MEMBER LAURIE: And if you  
17 didn't do it while I was still in the waiting room  
18 then you would be disbarred.

19 MR. ABELSON: let me try to answer in  
20 two different ways. First of all, the continuing  
21 education lawbook on nonprofits in the very first  
22 page of the very first chapter says that the most  
23 important duty a private attorney can perform with  
24 a client such as yourself is to go through a whole  
25 series of questions about whether or not it's

1       important or necessary to set up the nonprofit at  
2       all.

3               Because many people have preconceived  
4       notions about what they hope to accomplish with  
5       nonprofits, how easy it is to set them up, how  
6       easy it is to administer them, what the costs are,  
7       and some of those concepts are accurate and some  
8       of them may not be.

9               So, we would have to have a discussion  
10       about whether there was a true need for the entity  
11       to begin with.

12              But, assuming that after we completed  
13       that discussion you, as the client, were still of  
14       the opinion that you wanted to proceed. The  
15       actual mechanisms for setting them up are laid out  
16       in the state laws and procedures. And I would  
17       think that in most instances you can probably get  
18       an entity created within six months.

19              The different, however, between creating  
20       the entity and getting it actually operational is  
21       an area of greater uncertainty. Because there you  
22       have to have the entity, itself, decide on its  
23       board of directors, select an administrator or an  
24       executive officer to run it, staff up. And that's  
25       a function of how much time and effort the board,



1       itself, has; how quickly people can reach a  
2       consensus as to who should be on the board, what  
3       sort of resources are available to begin the  
4       start-up process.

5               So my short answer is we could probably  
6       get one set up legally in six months to a year at  
7       the most. It is less clear as to how soon  
8       thereafter we could actually have it functional.

9               PRESIDING MEMBER LAURIE: The basis for  
10       my question is my sense is that I would be a  
11       little bit more optimistic as to time and  
12       complexity.

13              I very much respect the argument in the  
14       paper that you're not satisfied that a nonprofit  
15       or the authority, in fact, buys us anything unless  
16       there is specific legislation authorizing these  
17       entities to conduct those functions that a state  
18       agency could not.

19              And even that, you make inquiry as to  
20       whether, if challenged, it would be legally  
21       defensible. And I understand that and I respect  
22       that.

23              On the question of controversy, you  
24       know, that's not an issue to me. Every sentence  
25       in this report and every issue in front of us is

1 going to be controversial because there's a large  
2 amount of money involved.

3 Two, I don't share the view that it's  
4 unnecessarily complex. And, three, I think any  
5 nonprofit board can be set up within six months  
6 and operating in six months.

7 My experience is, in setting up  
8 nonprofits, to me is just not a barrier to do.  
9 Getting the tax exemption is always the biggest  
10 hang-up, and there's no control over that time  
11 period.

12 So, on the issue of these other  
13 entities, at this point I'm not willing to accept  
14 the argument that the creation of them is, in  
15 fact, any barrier, and I'm willing to work with  
16 that.

17 There may be very legitimate other  
18 reasons, as you point out, CEB says, before you do  
19 it, ask a bunch of questions, and if it doesn't  
20 get you to where you want to go, then don't do it.  
21 And the question is does this get us to where we  
22 want to go, what advantages are there. And those  
23 are to be further examined.

24 Commissioner Pernell.

25 COMMISSIONER PERNELL: Yeah, just I have

1       some questions on administrative structure. And  
2       it's just for my clarification.

3               One of them is can the administrators,  
4       the program administrators also be the program  
5       implementers? Is there anything that's precluding  
6       or --

7               MR. SLOSS: Our recommendation was that  
8       an administrator would not be the implementer, nor  
9       would one of their affiliates be the implementer  
10      unless again there was no practical alternative to  
11      carry that an important priority part of the  
12      program.

13              COMMISSIONER PERNELL: Okay. Then the  
14      other has to do with the nonresidential sector,  
15      and I'm not clear on whether or not utilities are  
16      excluded from that or not.

17              MR. SLOSS: Under our proposal --

18              COMMISSIONER PERNELL: It seems --

19              MR. SLOSS: Excuse me.

20              COMMISSIONER PERNELL: Well, on one page  
21      it seems to say that they're excluded. And then  
22      on another it says that all entities can  
23      participate.

24              MR. SLOSS: There is an inconsistency in  
25      that draft. And it's the first statement that is

1 correct in terms of what our recommendation is,  
2 that they would not be -- they would be excluded  
3 from being an administrator of the nonresidential  
4 program.

5 They certainly could be involved as an  
6 implementer in the nonresidential program.

7 There are two sentences several pages  
8 apart in the report that are in direct  
9 contradiction to each other. We apologize for  
10 that.

11 COMMISSIONER PERNELL: And then if -- so  
12 who would bid on these if the utilities are --  
13 just give me an example of who we're talking about  
14 for the nonresidential sector.

15 MR. SLOSS: There could be ESCOs, local  
16 governments, for-profits and nonprofits that are  
17 already in existence, or would be created for that  
18 purpose. Other governmental agencies.

19 From our perspective there's a variety  
20 of enterprises that would be capable and able to  
21 do that.

22 MR. SUGAR: There were parties preparing  
23 proposals for similar contracts that the  
24 California Board of Energy Efficiency was  
25 preparing, too, to make available. Then that

1 process stopped. But there were bidders who were  
2 prepared to go ahead.

3 COMMISSIONER PERNELL: You know, I  
4 would, when we get to the audience comments,  
5 that's when I would want to hear from maybe  
6 stakeholders or other participants on what their  
7 comments are on that issue.

8 MR. MESSENGER: Just a brief point of  
9 clarification for those of you who may not  
10 understand where this contradiction came from.

11 Staff's original proposal was to put  
12 everything out to competitive bid. Then at the  
13 last workshop we heard from a variety of parties  
14 that there was some concern about whether we could  
15 handle that much money being put out to  
16 competitive bid all at once.

17 So we searched for some in-between  
18 position that would not put it all out to bid at  
19 once. And what we agreed on was this proposal  
20 that utilities would be allowed to bid to provide  
21 statewide programs for three of these market  
22 sectors, and the other two for the reasons put  
23 forth in the staff analysis would be excluded from  
24 utilities, but open to all other entities to bid.

25 So, in the process of making that change

1       we just didn't get all the sentences, and this is  
2       one of the sentences where it originally was  
3       everything out to bid, and now we believe that  
4       there are some advantages in terms of making sure  
5       the transition is smooth, to allow the utilities  
6       the opportunity to bring in competitive proposals  
7       to manage these three sectors on a market sector  
8       level. And leave it up to the Commission to  
9       decide whether they have, in fact, mitigated any  
10      conflicts of interest they may face when they  
11      present their proposals when they competitively  
12      bid.

13                   And then the hope is that the  
14      competition between utilities will bring out, you  
15      know, innovation and better programs, as opposed  
16      to the current process where there is no  
17      competition for these particular functions.

18                   Thank you.

19                   COMMISSIONER PERNELL: Okay, I have one  
20      other question, and this may be under a different  
21      program, but I'll ask it anyway.

22                   And that is on our advisory panel, and  
23      it's suggested that maybe the Legislature and CEC  
24      or somebody appoint that panel.

25                   Is there anything that reflects that

1 part of that makeup should be representatives from  
2 the muni's?

3 MR. SLOSS: We hadn't actually gotten  
4 into that level of detail. In the report, itself,  
5 our recommendations was that that was certainly  
6 discussed, that the muni's could be one of the  
7 members of that review organization.

8 So, I guess my -- answer is yes.

9 COMMISSIONER PERNELL: That's always  
10 good.

11 (Laughter.)

12 COMMISSIONER PERNELL: Nothing further.

13 PRESIDING MEMBER LAURIE: Let me talk  
14 about that advisory panel. Now, that's a bit  
15 different than the independent review panel?

16 MR. ABELSON: Right. The advisory panel  
17 is something that we mentioned in the report under  
18 the governance section. As Mike Sloss has  
19 indicated, governance has several functions, the  
20 strategic plan that gives rise to the budgeting  
21 allocation, a set of evaluation processes that  
22 ultimately would be the back-end of determining  
23 how programs move forward. And, of course, some  
24 administrative functions related to the  
25 contracting for the main administrators.

1           All of that is going to be fairly major  
2       decision-making, with a lot of policy  
3       implications. And the report very clearly  
4       recommends that a high level advisory panel be  
5       created, made up of stakeholders and other  
6       interested parties -- so it certainly could  
7       include municipal utilities if that was deemed to  
8       be appropriate -- that could provide input to this  
9       Commission as it went about its efforts.

10           They would be advisory and that means  
11       that the Commission would be free to disagree with  
12       some of the recommendations. But presumably they  
13       would be people with a great deal of interest in  
14       and information about the program. And hopefully  
15       would provide constructive input.

16           And, yes, Commissioner, that is  
17       different from the independent panel, which is  
18       something that would provide a review to the  
19       Legislature and to others every couple of years.

20           PRESIDING MEMBER LAURIE: I only note  
21       that I recognize the importance of getting input  
22       from entities such as advisory panels. But  
23       advisory panels are also often misused and abused.

24           And the care and feeding of advisory  
25       panels is really an art because these folks have



1       time that is valuable, and they -- so those  
2       entities must be approached with a great deal of  
3       sensitivity.

4               Ms. ten Hope, do you have any questions  
5       or comments at this time?

6               MS. TEN HOPE: No, I don't.

7               PRESIDING MEMBER LAURIE: Mr. Wilson?  
8       Does staff want to take this opportunity to stick  
9       it to any of the other staff members by asking  
10      imponderable questions?

11              (Laughter.)

12              PRESIDING MEMBER LAURIE: Now, ladies  
13      and gentlemen, then at this point we'd like to  
14      open the public questioning. Please note, as has  
15      already been stated more than once, this report is  
16      a staff report.

17              It has been presented to the public and  
18      the Committee concurrently. The Committee is  
19      certainly familiar with the report, but needs your  
20      input prior to making a decision. The next  
21      document that you will see will be a Commission  
22      report.

23              So to the extent that you desire input  
24      into this proceeding, through this forum, then the  
25      next couple hours is your best opportunity to do

1       so. Although you're certainly always free to  
2       provide written submittals at anytime.

3               So, we'll be going over our timeframe in  
4       which we have to act in the next 30 days or so.  
5       But there will be some limited amount of time,  
6       recognizing that time is short, and that as we  
7       deal with policy issues, we're also dealing with  
8       editing issues.

9               So, the microphone is open and  
10      available, and your comments at this point would  
11      be appreciated. I do have some blue cards. You  
12      will not be penalized if you seek to go to the  
13      microphone and offer an utterance without filling  
14      out a blue card.

15              Let me call upon Mr. Reedy from Global  
16      Energy Partners.

17              I will not place time limits until such  
18      time as we feel you're abusing the microphone and  
19      people are starting to leave, at which time we  
20      will call your attention to that fact.

21              Mr. Reedy.

22              MR. REEDY: Good morning. The  
23      distinction of being first, I'm not sure --

24              PRESIDING MEMBER LAURIE: No, because  
25      you're the best. We always want to start off with

1 the best shot.

2 MR. REEDY: I'm glad you said that,  
3 thank you, sir.

4 Commissioners and staff, thank you. My  
5 name is Mark Reedy. I'm here today representing  
6 the interests of Global Energy Partners. Global  
7 Energy Partners is a company formed by the  
8 Electric Power Research Institute, the Gas  
9 Research Institute and an architectural  
10 engineering firm named Daniel, Mann, Johnson and  
11 Mendenhall.

12 And basically we're here today to offer  
13 our comments on staff's report. Basically we  
14 agree with the recommendations of staff as they've  
15 been outlined in this report. As we all know, the  
16 devil is in the details and we look forward to  
17 those devils in the future.

18 We have just a few comments that we'd  
19 like to highlight. The first is that we were  
20 enthusiastically supportive of the Commission  
21 being assigned the role of program governance and  
22 oversight of the energy efficiency marketplace.

23 We believe the CEC has the technical  
24 expertise and the objectivity to effectively  
25 manage this important activity on behalf of the

1 consumers of California.

2 We're also excited about this  
3 opportunity because we feel that there's a need to  
4 make connections between the PIER program and the  
5 energy efficiency marketplace that does not exist  
6 today. We feel the CEC can effectively transfer  
7 the results from the PIER program to this  
8 marketplace. It's an area that some have called  
9 the valley of death, and we think the CEC can  
10 manage that.

11 We also agree with the notion of three  
12 to eight program administrators. What the staff  
13 has put out in their structure we like. We  
14 especially like the reliability administrator and  
15 the innovative initiative administrator. We think  
16 these are areas that again show how the CEC is  
17 looking at the state and the marketplace as a  
18 whole, instead of just focusing on just one  
19 particular area.

20 We also like the proposal for market-  
21 focused administrators, residential and  
22 nonresidential, new construction and the other two  
23 mentioned. However, the trick here, as our  
24 experience has been, is to make those cross-  
25 functional teams. You create too much of a

1 stovepipe between residential, nonresidential.  
2 That can be a problem. And we think that one of  
3 the details in the future that needs to be really  
4 looked at is how to create an environment that's  
5 conducive to this cross-functional nature of the  
6 administrators.

7                   There is one area that we feel that  
8 staff has underestimated, and that is the  
9 technical support contracts. \$200,000 or \$300,000  
10 we feel is inadequate for what is needed. We  
11 understand that staff is recommending large  
12 additions of CEC Staff, however we have seen in  
13 the past that the technical side of it can  
14 sometimes get away from you.

15                   And finally, to address Commissioner  
16 Pernell's question we were one of the potential  
17 bidders in the CPUC/CBEE proposal. We were active  
18 in preparing a bid for that effort.

19                   And finally, we look forward to the next  
20 steps, and hope to stay intimately involved.

21                   Thank you.

22                   PRESIDING MEMBER LAURIE: Thank you, Mr.  
23 Reedy. Questions?

24                   COMMISSIONER PERNELL: No questions.

25                   PRESIDING MEMBER LAURIE: Thank you,

1       sir.

2                   MR. MATTHEWS: I have a question. Do  
3       you have an estimate or a feel for the amount of  
4       technical support --

5                   MR. REEDY: Our gut reaction was  
6       probably three times that much. Over that period,  
7       the two-year period of time.

8                   MR. MATTHEWS: Over the two years.

9                   MR. SUGAR: So approximately \$500,000 a  
10      year?

11                  MR. REEDY: Yeah, we think it would  
12      probably be better.

13                  MR. SUGAR: Thank you, sir.

14                  PRESIDING MEMBER LAURIE: Very good.  
15      Mr. Burt.

16                  MR. BURT: Thank you. First of all, I  
17      have to say I have not read the report, but have  
18      taken part in previous staff discussions.

19                  PRESIDING MEMBER LAURIE: Sir, could  
20      you --

21                  MR. BURT: I am Robert Burt of the --

22                  PRESIDING MEMBER LAURIE: --and  
23      everybody who speaks --

24                  MR. BURT: -- Insulation Contractors  
25      Association, for the record.

1                   PRESIDING MEMBER LAURIE: Thank you.

2                   MR. BURT: My first comment is that I  
3 believe that the summary provided in 1A3 is a good  
4 one. I commend the staff for the summary of  
5 lessons learned.

6                   I would go on to say, however, that the  
7 continuous emphasis in many places in the report,  
8 and I've scanned on market transformation, I think  
9 looks at the wrong paradigm. Unless our  
10 civilization just stops in its tracks and human  
11 nature changes, we're going to have continuous  
12 innovation and we're going to have continuous  
13 problem of cultural lag of implementing that  
14 innovation.

15                  If it's in California's interests to  
16 save energy at a greater rate than might occur if  
17 we just allow an innovation to come in and get in  
18 the marketplace as it helps, as it needs, then  
19 we're going to have to assume that this market  
20 transformation is not a one-time thing. It's  
21 going to have to be a continuous activity.

22                  We're going to have to constantly assume  
23 that we have to go after the innovations and make  
24 sure that they get into the market. So the  
25 constant notion, well, we can do it and lay back,

1 I don't think that will happen.

2 Okay, I have some minor comments. First  
3 of all, I don't think I agree with the previous  
4 comment that you will, judging by my observation  
5 of the Commission's activities, that you would  
6 burn \$300,000 very quickly. I don't think that  
7 that's nearly enough for your technical support if  
8 you still don't have a lot of your own staff on  
9 board.

10 And on that point I would note that the  
11 Legislature authorized nine positions to be added  
12 to the PUC, support the two boards now governing,  
13 which creates a bureaucratic fight if you ask for  
14 positions, are those nine positions going to be  
15 removed. And how much fight do you have on that  
16 subject.

17 I would say that on the subject of  
18 founding a nonprofit corporation, since I'm not a  
19 lawyer I'm not aware of all the difficulties. In  
20 my previous career I founded one in three days,  
21 and we were up and running. The purpose was to  
22 gather private funds to lobby for deregulation of  
23 trucking. So it's not analogous, but I'm saying  
24 that setting up a nonprofit is easy.

25 But looking at the Commission's problem,



1       trying to set one up that was related to this  
2       problem here of running a public goods program,  
3       I'd say it's extremely difficult.

4               A bill was passed. Fortunately the  
5       Governor vetoed it, because in the course of the  
6       action of that bill, all of these programs were  
7       placed under the Legislature for appropriation.

8               I would state from 35 years of  
9       experience with the Legislature they're an  
10      extremely untrustworthy trustee, and to turn over  
11      funds to them for handling on any subject is an  
12      unlikely project to succeed in the long run.

13              On the subject of possible utility  
14      conflict of interest, the problem is now that the  
15      current rate design says that the utility, which  
16      is a transportation distribution utility, loses a  
17      dime or more for each kilowatt hour does not  
18      deliver.

19              But their costs in T&D are not fixed  
20      that way. Their costs of T&D, a lot of them are  
21      fixed costs. And so this lost revenue from energy  
22      saving is, most of it, dead loss. There is very  
23      little saving to the utility when it does not  
24      deliver AWH as a T&D utility. So there is a  
25      conflict.

1                   The way the Commission originally  
2           resolved that conflict was to, in effect, give the  
3           money back in what was called an ECAC procedure.  
4           But I think that that process is now dead.

5                   And finally, I would comment on the  
6           condition of muni to your advisory board. I'd say  
7           yes, that's a wise notion as long as it's  
8           advisory. If that board is to have authority then  
9           I would point out that the muni's have always  
10          passionately resisted state authority over their  
11          activities. And therefore, to give them authority  
12          over this process without some authority over them  
13          would not be a balanced process.

14                   With that, if you have any questions I  
15          would be delighted to answer them.

16                   PRESIDING MEMBER LAURIE: Thank you.

17                   COMMISSIONER PERNELL: I have just a  
18          couple questions, well, maybe responses.

19                   One of them is the IOU conflict of  
20          interest, and that is perceived because of the  
21          scenario you laid out. And so my question is, do  
22          you know of any specific situations that you can  
23          point to that that has been the case?

24                   MR. BURT: Well, any effects of conflict  
25          of interest are extraordinarily difficult to find.

1 I would say that it's my opinion that the utility  
2 administration of many of these programs has been  
3 inefficient, but I suspect that may be simply  
4 because utilities are large bureaucracies and  
5 large bureaucracies tend to be inefficient.

6 So I can't say that I can point to a  
7 cause. I simply say that there is a conflict of  
8 interest.

9 COMMISSIONER PERNELL: Okay. And then  
10 the other one that's more of a comment is that the  
11 muni's, and this I think that if the muni's total  
12 a third of our load then they should have some --  
13 or at least we should seek their opinion on some  
14 issues. Although I agree with you that if they're  
15 not, you know, this is one of those situations  
16 where you got to pay to play.

17 But an advisory board I think would be  
18 good because we want to hear from all of the  
19 energy interests in the state.

20 MR. BURT: That was my point. If  
21 they're advisory, I think it's a very good idea.  
22 But if that board is going to have any authority,  
23 I think it's a poor idea.

24 MR. SUGAR: Mr. Burt, I have a question.  
25 Given your lack of trust in the Legislature, which

1       they have on occasion, I'm sure, earned, what  
2       options do you see to overcome that or avoid it?

3               MR. BURT: Well, the short answer would  
4       be in effect, and it's not easy, but would be in  
5       effect a memorandum of understanding between the  
6       Energy Commission and the PUC wherein the current  
7       process for collecting these funds would continue.  
8       It's just that the operation and disposition of  
9       them would move one further step away.

10              Currently the Commission has, in a  
11       slightly ambivalent way, turned over the operation  
12       of these programs to two boards. To move it one  
13       step further, I don't think, would be too  
14       traumatic. But, that process would mean that the  
15       Commission would have to be involved in utility  
16       cases, because the money that comes out for these  
17       programs is, in effect, appropriated utility  
18       cases.

19              But, again, 35 years of experience, I'm  
20       far more willing to accept the fair and balanced  
21       judgment of the PUC on a matter than I am of the  
22       Legislature.

23              MR. SUGAR: Thank you.

24              MR. SLOSS: I'm interested in getting  
25       your response to any of the questions that you'd

1       perhaps like to answer --

2                   PRESIDING MEMBER LAURIE:   Michael, move  
3       your amplifying microphone up again, please.  
4       Everybody can hear, but I can't.

5                   MR. SLOSS:   I'm sorry.   I'm interested  
6       in getting your response potentially to the  
7       questions that staff posed on page 57 of the  
8       report.   And that deals with the issue of, you  
9       know, we propose to allow utilities only to  
10      compete for administrator positions in three  
11      areas.

12                   We're interested in getting everyone's  
13      comments of whether or not that's a reasonable  
14      proposal.   And we wrote these questions to try to  
15      figure out if it's reasonable.

16                   So, in particular, given your  
17      experience, I'm interested in asking you the first  
18      question.   Do you think the current utility  
19      administrators pose sort of unique skills or core  
20      competencies, or unique access to data that we  
21      couldn't obtain in a competitive process?

22                   And then I'd also like to get your  
23      reaction to the last question, which is do you  
24      think this sort of essentially a set-aside of  
25      program areas for the existing administrators

1 helps us reduce the risk that there's going to be  
2 a program hiatus because it will be too hard for  
3 us to manage \$250 million plus --

4 MR. BURT: The short answer to both  
5 questions is yes. I strongly believe utilities  
6 have considerable core competency in these areas.  
7 And they have developed it over the years. They  
8 have people who are dedicated and interested in  
9 these programs.

10 And I am sure that it would be easier,  
11 if you're in the process of picking up the  
12 administration, if you utilize that core of  
13 competency. And have some consideration for  
14 utility resource management to let them know what  
15 your schedule is, instead of the process that's  
16 gone on for the past several years, where these  
17 people each year thought they might be having to  
18 get a new job within another year.

19 I think it would be far better to  
20 utilize that competency, would let them know, hey,  
21 here is a schedule we have set up.

22 So that's the short answer to your basic  
23 questions.

24 MR. SLOSS: Okay, thank you.

25 MR. MATTHEWS: If I may, I have just a

1       brief observation on the personnel issue. There  
2       were nine PY that were allocated to the PUC during  
3       the budget process, four of them were dedicated to  
4       energy efficiency. Those were limited term  
5       positions. So those positions disappeared at the  
6       end of the transition.

7               For us to get new resources we would  
8       need to have legislative, and the Governor to  
9       approve authorization, for new positions to be  
10      created --

11             MR. BURT: I recognize that, but having  
12      my previous life spending a lot of time in a large  
13      bureaucracy, I find they fight like wounded tigers  
14      to keep from losing a position.

15             MR. MATTHEWS: My point is those  
16      positions are going to disappear at the end of the  
17      transition regardless, unless there's new  
18      reauthorization.

19             PRESIDING MEMBER LAURIE: Mr. Wilson.

20             MR. WILSON: Do the insulation  
21      contractors have a viewpoint on the issue of  
22      market transformation versus resource acquisition  
23      oriented programs?

24             MR. BURT: The short answer is back when  
25      the program was resource acquisition obviously we

1       were supportive of it. Now, our problem is that  
2       we find that, as I said, unless you accept that  
3       market transformation is going to be a continuous  
4       job, we don't think that it makes sense to say,  
5       hey, we're going to do it and finish, as has been  
6       implied sometimes.

7                   MR. WILSON: And another question. I  
8       understand your comments about the redesign  
9       issues. Do you think the PBR mechanisms, if the  
10      rate designs are fixed, that the PBR mechanisms  
11      could be set up in a way to eliminate the utility  
12      conflicts?

13                  MR. BURT: The short answer is that  
14      human imagination can do a lot of different things  
15      in that area. I know, though, that the Commission  
16      rather firmly rejected the continuation of the  
17      ECAC, which in effect said okay, we just make you  
18      whole each year for whatever your costs were.

19                  The PBR mechanism was intended to  
20      prevent that; say, okay, we're now working where  
21      you have incentives to save funds.

22                  If there would be some way to make an  
23      estimate in a way that would be agreed by everyone  
24      as to what the utility lost by these programs,  
25      then the PBR mechanism I believe, yes, could



1 handle that.

2 But having observed the -- you did not  
3 constant problems in the ADAP where the utilities  
4 and the Commission Staff argue about how much was  
5 saved, I think that would be still a difficult  
6 process.

7 PRESIDING MEMBER LAURIE: Okay, thank  
8 you, sir, very much.

9 MR. BURT: Thank you.

10 PRESIDING MEMBER LAURIE: Now, Mr.  
11 Wilson. Stuart Wilson.

12 MR. WILSON: Good morning, Commissioner  
13 Laurie and Commissioner Pernell, and ladies and  
14 gentlemen. For the record, I'm Stu Wilson  
15 representing the California Municipal Utilities  
16 Association, and I want to thank you for the  
17 opportunity to speak to you today and participate  
18 in this proceeding.

19 I particular appreciate the informality  
20 of the proceeding all the way along here. It  
21 makes it easy for people to engage the process, I  
22 think, and that's very welcome.

23 I'd also like to commend the staff on  
24 the draft report that they provided you. I think  
25 they've taken what is obviously a very complicated

1 ball of worms and legislative direction and  
2 information and opinion and managed to make  
3 something coherent out of it, which is a very big  
4 challenge. And I think it deserves recognition  
5 for having accomplished that.

6 I'm going to direct most of my comments  
7 to the implications or the parts of the report  
8 that bear more directly upon our members,  
9 municipal utilities -- electricity utilities in  
10 particular.

11 As many of you will recall, the AB-1890,  
12 the restructuring legislation was enacted three  
13 years ago, and it did provide very specific  
14 direction for the PUC and the investor-owned  
15 utilities with regard to funding levels for  
16 specified so-called public goods or public  
17 benefits programs through the transition period as  
18 we transition to the competitive market.

19 And then it sort of ended and left open  
20 the question what happens after the transition.  
21 And then the legislation enacted this year, 1105,  
22 I think was the Legislature's sort of request of  
23 this body, or direction to say, first of all, tell  
24 us what you think ought to happen going forward.  
25 And then, you know, how would you transition sort

1 of the administrative or oversight of these  
2 programs, or at least the energy efficiency piece  
3 of it to your body.

4 The original legislation did deal with  
5 municipal utilities quite a bit differently.  
6 Basically, with regard to most of the matter  
7 pertaining to restructuring and moving to  
8 competition sort of left the decisions up to the  
9 local elected authorities who regulate the  
10 municipal utilities.

11 There were, however, a couple of  
12 mandates in that bill that applied to us. And one  
13 of them dealt with public goods.

14 In fact, it may come as a surprise to  
15 some folks that we actually volunteered for a  
16 mandate regarding public goods when that  
17 legislation was enacted. Because it did seem to  
18 us like a very legitimate sort of matter of policy  
19 that there be both access to public goods, and  
20 some sense that the obligations were distributed  
21 fairly among the utilities of the state to fund  
22 those programs.

23 And so we were actually asked by members  
24 of the commerce committee to submit a letter  
25 asking for the mandate. I think so that maybe

1       they could use it later if anybody tried to come  
2       back and get state funding for the mandate.

3               But, in any case, that's sort of the  
4       background. The legislation, while imposing the  
5       requirement on municipal utilities, did leave  
6       completely to the discretion of those local  
7       governing bodies the allocation of the funds among  
8       the categories of public goods that are spelled  
9       out in the legislation, and within those  
10      categories.

11             And that is basically where we are  
12      today. The report that you have before you does  
13      recommend continuation of the energy efficiency  
14      programs and appropriate levels of funding. And  
15      as an association we don't have a specific  
16      position on that part of the report.

17             I know some of our members have already  
18      endorsed a continuation of the energy efficiency  
19      programs and the funding levels. I would expect  
20      others may do so, as well.

21             We do, however, have a commitment to  
22      essentially accepting the level of funding and the  
23      continuation of these programs to the extent that  
24      they're adopted by the Legislature. That would be  
25      a continuation obligation that would fall upon our

1       utilities to continue those programs at that  
2       level.

3               We, I think, would tend to favor the  
4       report's recommendation regarding the Energy  
5       Commission as the governance of oversight  
6       authority, rather than attempting to establish  
7       some new entity, whether it would be a government  
8       agency or a nonprofit corporation.

9               The Energy Commission has the experience  
10       and the knowledge which would not necessarily be  
11       so readily available to a new entity. And we  
12       certainly have a history and a track record of  
13       working closely with the Commission on these  
14       matters in the past. And we feel it would be  
15       fairly natural to do so in the future.

16              We do particularly appreciate the  
17       recommendation in the report, that specifically  
18       that the publicly owned utilities not to be  
19       required to transfer their public goods funds to  
20       some state entity for purposes of administering  
21       statewide programs.

22              As I indicated, I think that is  
23       consistent with current law, and we appreciate  
24       that acknowledgement, and certainly support that  
25       recommendation.

1           The report does recommend that publicly  
2           owned utilities voluntarily report to the Energy  
3           Commission regarding their expenditures for public  
4           benefits and the expected benefits from those  
5           programs.

6           And we would endorse that  
7           recommendation, as well. We think that's a  
8           reasonable proposal. And CMUA would certainly  
9           pledge to work with the Commission and with our  
10          member utilities to make that work, to bring that  
11          about, to facilitate the reporting process.

12          We might even go a little farther in  
13          drafting your Committee document, you might want  
14          to consider some kind of a mechanism to facilitate  
15          the coordination between the publicly owned  
16          programs and the Energy Commission programs,  
17          programs governed by the Energy Commission.

18          And I'm not sure what the best mechanism  
19          for that would be. It occurs to me that some kind  
20          of a Committee could be established, and whether  
21          it would be related to the advisory committee or  
22          not isn't clear to me. But some kind of a  
23          committee where the publicly owned electric  
24          systems and the Energy Commission could work out  
25          things like the format and the content and the

1 scheduling of reporting, as well as attempting to  
2 coordinate where possible the various programs  
3 that are adopted.

4 Because I do see at least the  
5 opportunity for some joint efforts with regard to  
6 marketing or administration or perhaps in some  
7 cases -- the municipal utilities might wish to  
8 literally sort of subscribe to or buy into.

9 So at least I would not want to  
10 foreclose those options. And would like to make  
11 some kind of mechanism which would make it as easy  
12 as possible for that level of coordination to  
13 occur.

14 And that's basically the gist of my  
15 comments. We certainly -- our member utilities  
16 have, for the last three years, been gearing up  
17 and implementing public goods programs in  
18 accordance with the law. And they have spent a  
19 fair amount of time getting public input, holding  
20 hearings and putting programs in place.

21 They have a tradition of working with  
22 your staff here at this Commission We have a  
23 committee that deals with energy efficiency  
24 programs amongst our members, and a couple of your  
25 staff people have been ex officio members of that

1 committee for advisory purposes, and otherwise  
2 it's been very helpful. So, hopefully that will  
3 establish a precedent going forward here.

4 There were a couple of very specific  
5 comments in the report that I wanted to make. One  
6 of which, I think actually was addressed in the  
7 errata sheet that was handed out. It was just a  
8 number that I thought was in error regarding the  
9 funding levels.

10 The other comment, though, that's  
11 specific is having to do with the mechanism for  
12 collecting the funds, and the recommendation that  
13 it be a mills/kilowatt hour charge. And the  
14 recommendation is sort of in the alternative as to  
15 whether or not it would be applied to municipal  
16 utilities as their mechanism for collecting the  
17 money.

18 We would prefer that it not be mandated  
19 on municipal utilities to collect that way. Some  
20 of them do. Some of them have calculated what the  
21 funds are, and turn it into a kilowatt hour charge  
22 and reflect it on the bill that way.

23 Others use a percentage of the bill  
24 method of calculating the charge. And others  
25 don't show anything on the bill, they do this as a



1        budgeting matter, where basically the amount of  
2        funds are -- it's just collected in the energy  
3        charge and then budgeted for these programs.

4                    So, given that those area ll ratemaking  
5        matters, and matters involving public hearings and  
6        so forth, I think it would be preferable not to  
7        force a bunch of us to go back and re-do that  
8        approach.

9                    That concludes my comments. Thank you.

10                   PRESIDING MEMBER LAURIE: Thank you, Mr.  
11        Wilson. Questions?

12                   COMMISSIONER PERNELL: Mr. Wilson, thank  
13        you for coming up. Muni's are something that, as  
14        you know, I'm interested in. You indicated that  
15        at least in your opinion that the muni's have  
16        voluntarily done some rewarding, or maybe you said  
17        that, I don't know, maybe that's wishful thinking.

18                   But let me ask you, does CMUA collect  
19        these reports? I mean how would we then insure  
20        that the Commission, whether it's only annual,  
21        even if we sit down and have a committee and talk  
22        about this, how will we insure that all of the  
23        muni's are actually reporting, given our  
24        responsibility here to insure that energy  
25        efficiency is, you know, evenly across the state,

1 not just in certain IOU areas? Or certain muni  
2 areas.

3 So we're looking for a way to have some  
4 consistency.

5 MR. WILSON: I appreciate the comment,  
6 and I can't give you a guarantee. I can endorse a  
7 recommendation in the report that says that this  
8 is a voluntary submittal, and I can pledge to you  
9 that our Association will do our best to  
10 encourage, strongly encourage our members to  
11 participate and try to work with them to set up in  
12 a way which people don't feel is unduly  
13 burdensome, or unnecessarily burdensome on them.

14 As far as the uniformity, you know, I  
15 guess my thought is that the current legislation  
16 actually allows local city councils or governing  
17 boards to spend 100 percent of the public goods  
18 money on photovoltaics, rooftop photovoltaics and  
19 nothing on energy efficiency, if that was the  
20 judgment of that local entity that that was the  
21 best thing for their customers and for their  
22 utility.

23 So, there isn't at present a mechanism  
24 to assure that each of the utilities funds energy  
25 efficiency programs at a comparable level or any

1 particular level, although what information I do  
2 have, which is certainly not exhaustive or  
3 complete, suggests that probably energy efficiency  
4 programs are a substantial portion of the public  
5 goods expenditures for most of the publicly owned  
6 utilities.

7 The staff had apparently done a sampling  
8 of utilities and concluded that of those that they  
9 sampled, something like 40 percent or so of the  
10 funds were being spent in this area of energy  
11 efficiency.

12 And clearly, if the reports reveal, you  
13 know, that that's different, well, I think you  
14 have to be a little bit careful. I mean there's a  
15 lot of variation among utilities, including  
16 municipal utilities, and you're aware as well as,  
17 maybe better than most, a good example is the City  
18 of Vernon in southern California, which is a  
19 municipal utility.

20 It has something like 30 residential  
21 customers in the whole city. The load is 99  
22 percent commercial and industrial. So, it may not  
23 make a lot of sense for Vernon to do, say, low  
24 income programs for residential customers. It may  
25 very well make sense for them to do nonresidential

1 energy efficiency programs, and I believe that  
2 that's, you know, what their focus is.

3 But just by way of, you know, that's an  
4 extreme example. But there's enough variation  
5 amongst the utilities that you would expect them  
6 to come to rather different, maybe somewhat  
7 different approaches to the expenditure of these  
8 funds.

9 COMMISSIONER PERNELL: Yeah, I guess I  
10 was framing that on a, when I say consistent, that  
11 is a kind of a consistent reporting.

12 MR. WILSON: Right.

13 COMMISSIONER PERNELL: So that if in  
14 your opinion is annually or biannually, I mean you  
15 mentioned that might be a burden on the small  
16 municipal utility. So we don't want to do that,  
17 but we would like to know what's out there. At  
18 this point we don't know.

19 MR. WILSON: Well, I appreciate that,  
20 and I think it's entirely appropriate. I mean  
21 it's public money and it's public information.  
22 And I can see really no one having an objection to  
23 making that information available. They certainly  
24 shouldn't.

25 The real question is how do you organize

1       it, how do you get it in some form which, you  
2       know, makes some sense that people can use and to  
3       compare, and to be able to do that on a basis  
4       which is, as you say, consistent, and in a more or  
5       less predetermined timeframe.

6               I'm of the opinion that we will be able  
7       to do that by, you know, establishing both the  
8       recommendation and this report, which I think is  
9       important. And some kind of a mechanism, perhaps  
10      the Committee, or some other mechanism which  
11      would, you know, allow us to work out the specific  
12      details of how often.

13             I don't know if the answer, whether  
14      every year or every two years. My inclination  
15      would be every two years ought to be sufficient,  
16      but I think we're open to talking about that.

17             Certainly they do budgets -- most of  
18      them do budgets on an annual basis, so maybe  
19      that's not an undue burden. And in terms of, you  
20      know, what kind of information and how to report  
21      it, and so forth. I'm certainly optimistic that  
22      we can work that out.

23             COMMISSIONER PERNELL: I'm sure we can.  
24      Final question is you mentioned something about  
25      mills per kilowatt hour.

1                   MR. WILSON: Yeah, what I was I guess  
2                   pleading is that the Energy Commission not  
3                   recommend that all of the municipal utilities  
4                   collect their public benefits charge in the same  
5                   mechanism, namely mills per kilowatt hour charge  
6                   that is recommended in the report for the  
7                   investor-owned utilities, and recommended sort of  
8                   in the alternative for all of us.

9                   I recognize there's some virtue in that.  
10                  I mean I recognize sort of the logic behind the  
11                  recommendation in the report. It certainly has  
12                  simplicity and other things going for it.

13                  And as I indicated, some of our members  
14                  have done that. But others have not. And I would  
15                  prefer not to have them have to go back and change  
16                  and recalculate the way they collect these funds,  
17                  as a result of this report.

18                  COMMISSIONER PERNELL: So is the  
19                  bottomline the same?

20                  MR. WILSON: Yeah.

21                  COMMISSIONER PERNELL: If they're  
22                  collected a different way is --

23                  MR. WILSON: I'm not proposing any  
24                  change in the obligation in terms of the funding  
25                  level that would be incurred by the municipal

1 utilities as a result of the level of public  
2 benefits funding that the state established going  
3 forward for all of these programs.

4 COMMISSIONER PERNELL: Thank you.

5 MS. TEN HOPE: I just wanted to ask a  
6 clarification question that I think is answered  
7 through the errata. Through the report it looked  
8 like the rates collected by the municipals were  
9 considerably lower than the IOUs.

10 Is that rate comparable?

11 MR. WILSON: Yes, and that was the point  
12 I sort of alluded to in my remarks, that I thought  
13 the errata corrected. The number, in our view, is  
14 2.85 percent of electric revenues, retail electric  
15 revenues.

16 And that's the number that we  
17 recommended based on the numbers that were in the  
18 legislation, trying to make sense of the words as  
19 well as the numbers in the legislation.

20 We came up with -- we had considerable  
21 discussion, but eventually arrived at, and I think  
22 Mike was, in fact, involved in some of our  
23 discussions, we eventually arrived at 2.85 percent  
24 of revenues is what the obligation under the law  
25 was.

1                    Obviously utilities are free to budget  
2                    more money than that, but that's what -- and so  
3                    that's the -- our Association came up with the  
4                    report and recommendation to our members that  
5                    that's their obligation under the law to fund the  
6                    programs. And I think the errata recognizes that,  
7                    so.

8                    MS. TEN HOPE: Okay, I just had one  
9                    other question. I appreciated your comments about  
10                   coordination because I think that there's been an  
11                   effort over the last couple years to do more  
12                   coordination within the IOU programs for statewide  
13                   program delivery, but very little discussion to  
14                   bring in the municipal programs.

15                   Do you have any thoughts on  
16                   administrative structure that facilitates that or  
17                   hampers that, that we could consider to, you know,  
18                   try to encourage that voluntary cooperation?

19                   MR. WILSON: I'm certainly open to the  
20                   thoughts on that. I don't have a specific  
21                   proposal. I mean I made a suggestion that we  
22                   might want to set up some kind of a standing  
23                   committee that would have a regular sort of charge  
24                   in terms of how it would address these  
25                   coordination issues between municipal programs and



1 the programs that may be developed and  
2 administered under the governance of the Energy  
3 Commission.

4 You know, I don't know, other than  
5 trying to make sure that we talk to one another at  
6 the right time about the right subjects, how else  
7 to do that. And whether it's establishing a  
8 committee or some other mechanism, I don't know.  
9 I mean I'm certainly open to working that out.

10 But I think it is important to do  
11 something, I agree with that.

12 MS. TEN HOPE: Okay, thanks.

13 PRESIDING MEMBER LAURIE: Mr. Abelson.

14 MR. ABELSON: Actually, the question and  
15 answer Mr. Wilson has already spoken to, thank  
16 you.

17 PRESIDING MEMBER LAURIE: Thank you,  
18 sir.

19 MR. WILSON: Thanks.

20 PRESIDING MEMBER LAURIE: ADM, please.

21 And in order I'll be calling upon Mr.  
22 Vine, Mr. Miller and Mr. Schiller.

23 DR. ELY: Thank you. Commissioners, my  
24 name is Dick Ely. I work for a company, ADM  
25 Associates. We sort of fall into that category

1 right now of third-party innovator implementers,  
2 come out of about 15 years of experience in  
3 business.

4 My comments today really address the  
5 underlying policy issues and how one derives from  
6 those policy issues certain goals, and from those  
7 goals how those can be implemented.

8 They are very supportive. I think the  
9 staff has done a marvelous job of putting together  
10 an extremely contentious long-term battle that  
11 I've witnessed at very close hand, as many of us  
12 have over at the CBEE.

13 I would like to draw your attention,  
14 please, first to section 4, which on my printout  
15 is on page 16, and if you will allow me to  
16 paraphrase the first paragraph, it's the staff  
17 recommended, overarching goals.

18 The overarching goal, the staff  
19 recommends that the CEC PGC energy efficiency  
20 program be dedicated to the overarching goal of  
21 cost beneficial energy efficiency in the  
22 marketplace.

23 In the rest of the paragraph it goes on  
24 to sort of elaborate that, the other elements of  
25 it. The purpose of pursuing this goal is to

1 capture long- and short-term benefits,  
2 specifically reducing societal's cost of energy,  
3 increasing economic growth, improved environmental  
4 quality, enhanced quality of life, and improving  
5 reliability of the system.

6 I think this is an excellent, excellent  
7 place to start. I recommend the Commission  
8 seriously look at this program as a basis for what  
9 they are doing. Once they have a policy in place,  
10 one can derive from that policy a whole series of  
11 implementing elements.

12 Specifically, unfortunately, within the  
13 document is a bit inconsistent. If one refocuses  
14 back on what I have as page 9, which is the  
15 summary, the summary of staff recommendations, my  
16 printout page 9 under program goals and program  
17 design, the staff summarizes, if I may read,  
18 success will be measured by the increased number  
19 of successful private businesses that provide  
20 energy efficient products and services. And then  
21 the rest I have no problem with.

22 This is a metric, if you will, or an  
23 attempt at a metric for measuring success at the  
24 goals. And I think it's a good start. It points  
25 to the need of metrics, and I think it provides

1 the basis for answering the question which was  
2 raised by the previous speaker, Mr. Wilson, as to  
3 how do the CEC and the municipals work together.

4 By having metrics one of the ways they  
5 can work together is to compete. If the  
6 municipals are effective in delivering energy  
7 efficiency services in a particular way, then  
8 whatever mechanism is set up here by the CEC  
9 might, in effect, compete for cost effectiveness  
10 or whatever metric is designed by simply putting  
11 down those metrics you provide a fabric and a  
12 rubric by which you can compare how well the CEC  
13 mechanism is doing with, in fact, the loyal  
14 opposition, the municipals, who basically have the  
15 same goal, and in many ways, the same structure,  
16 even if the funding mechanism is entirely  
17 different.

18 So that one might consider that the very  
19 coordination could be reduced, if you will, to an  
20 open competition. The competition requires rules,  
21 and those rules again should be derived from the  
22 policy goals.

23 Focusing back on that successful measure  
24 I think that's an unfortunate, that could be  
25 interpreted and has been interpreted in the past

1       that the private businesses that provide energy  
2       efficiency services, that would imply that success  
3       would be very successful if we had a very large  
4       number of sort of after-market energy efficiency  
5       service providers.

6               That interpretation is equivalent to  
7       saying we can judge the success of a health  
8       program by the number of doctors that are out  
9       there practicing, rather than by how healthy the  
10      population is.

11             I think one should stem as quickly as  
12      possible in the goal stage, in the definition  
13      stage, of coming back to the original goal laid  
14      out very clearly, or a good attempt there, at that  
15      first paragraph at section 4, and not going off  
16      and saying success is measured by the number of  
17      people, or the number of agents in the after  
18      market, in the retrofit and clean up the poor  
19      decisions that were made by the implementers.

20             From those original principles, if the  
21      Commission adopts principles out of that first  
22      paragraph, which I indeed think it should, it's  
23      not clear that then the second paragraph in that  
24      same section basically that points to the  
25      inclusion of system reliability and teaching

1 people about energy prices are necessarily the  
2 only, or the best use of funds.

3 Those are, of course, important things  
4 that should be undertaken by someone, but it's not  
5 clear that they follow directly from the  
6 principles laid out in the first paragraph, or in  
7 fact, from the principles the Commission may  
8 derive.

9 If we start slipping away from energy  
10 efficiency and public good to some other set of  
11 goals, such as reliability, you have to make sure  
12 that you're not as easily wanting to slip off into  
13 other important goals, such as survival of the  
14 planet, environment, safety and other things that  
15 just sort of aren't mentioned here. Specifically,  
16 cost effectiveness, which is mentioned in the  
17 first thing.

18 It would not make any sense in the  
19 illogical extreme to have an extremely cost  
20 effective goal that's reduced everybody to only  
21 using energy efficient appliances, no matter how  
22 much they hate it. That is not what we want to  
23 do. That is not in the public good.

24 And that there's some balance here that  
25 has to consider quality of life and other things.

1       Energy efficient appliances, energy efficient  
2       services are not always the only solution that we  
3       want to derive.

4               The cost effectiveness and societal  
5       goals pointed out in that first paragraph, I  
6       think, are an excellent balance.

7               From these underlying principles, then  
8       you can address such things as funding levels.  
9       And funding sources. Allow me to go off into  
10      that, the funding level, then, would be  
11      appropriate where it is cost effective.

12              Cost effectiveness does not mean as much  
13      money as possible. It does not imply a particular  
14      mills per kilowatt hour, but it, in fact, comes  
15      from some sort of analysis of getting what is paid  
16      for. It also provides a basis for funding  
17      mechanism. The mills per kilowatt hour, or  
18      similar charges, of course, make no sense if this  
19      is a public goods charge based on the somehow  
20      perceived public cost or public burden of  
21      electricity.

22              As I mentioned in my previous remark,  
23      the use of electricity is certainly not a public  
24      burden. It is a public good. It is the  
25      generation transmission, to some extent, the

1       distribution of electricity that is a burden.  
2       Therefore, it makes no sense on a mills per  
3       kilowatt hour. But what would make some sense, or  
4       at least point in the right direction, is a charge  
5       on mills per kilowatt hour fossil, or mills per  
6       kilowatt hour tagged to whatever the society cost  
7       that is being generated here.

8                   This again points back to you needing an  
9       underlying theory of what you are doing in the  
10      entire program. Once you have defined that in a  
11      series of goals, then that will point out exactly  
12      where the funding mechanism makes some sense.

13                   Again, Commissioners, I don't think this  
14      is going to be solved immediately today in this  
15      immediate thing, but this is the appropriate  
16      platform to start discussing the long-term  
17      mechanism and the long-term what are we doing here  
18      with public goods. What is a public good, and how  
19      should it be addressed.

20                   I'd like to reiterate the general  
21      approach, if I may now get into an add detail. I  
22      see, as I mentioned last time, I enthusiastically  
23      support the recommendations of the staff to  
24      examine carefully and to allow, where it's  
25      effective, the use of the UDCs. They are the



1 hands-on end of wires delivery mechanism. I think  
2 it's a very appropriate role, with all the caveats  
3 about competition and the tie-ins with the  
4 suppliers of electricity.

5 Nevertheless you cannot open a door, as  
6 Bob will tell you, without connecting the energy  
7 efficient service to some kind of utility program.  
8 It's a magic key. And if we wish to be effective  
9 in energy efficiency, then we can't quickly drop  
10 that.

11 I think those are my remarks. I'd like  
12 to commend the staff. I think they've gone a long  
13 way on this program. Be happy to answer any  
14 questions.

15 PRESIDING MEMBER LAURIE: Thank you,  
16 sir.

17 MS. TEN HOPE: I just wanted to ask a  
18 clarifying question because I wasn't really clear  
19 on the comments on reliability and the goal of  
20 reliability.

21 What I understood was that you thought  
22 that the inclusion of reliability as a goal was  
23 appropriate as a public good, but that it should  
24 include some of the caveats of cost effective and  
25 other goal statements that were stated earlier.

1       Is that right, or did you think there should be  
2       additional focus on that program goal?

3               DR. ELY: I think more the former. It's  
4       not sort of what I think. I think the Commission  
5       ought to set up a series of goals, or a goal.  
6       State that goal, and from that goal then figure  
7       out how to spend the money.

8               Under the assumption that paragraph one  
9       is adopted, then reliability, if you will, is only  
10      one of five different things. And in many ways I  
11      think it's the least important one.

12              MS. TEN HOPE: Then I would ask staff,  
13      my understanding is that staff was assuming that  
14      other policy goals that were previously set forth  
15      by the PUC of market transformation, sustainable  
16      changes, da-ta-da, were incorporated, and then  
17      adding the addition of reliability, not focusing  
18      on that as the only one.

19              Did I misunderstand that or --

20              MR. SUGAR: That's a fair statement.

21              MS. TEN HOPE: Okay, so it wasn't  
22      excluding other policy goals?

23              MS. LEWIS: No, no.

24              MR. MESSENGER: I believe the place  
25      where staff lists all the goals is on page 17 and

1       18. There's a list of six goals. And I believe  
2       that's at least their initial proposal.

3               DR. ELY: Yes, I didn't want to get into  
4       page 17 for you'll notice number one right there,  
5       allowing me to read for a moment, number one is  
6       the increased number of successful private  
7       businesses that choose to provide energy efficient  
8       services.

9               MR. MESSENGER: You're not -- our pages  
10       numbers are wrong here.

11              DR. ELY: I'm sorry, I'm looking under  
12       paragraph one of specific goals, which follows  
13       directly in section four.

14              MR. MESSENGER: Okay, I'm sorry. I see.  
15       Yeah, I understood your comment, and believe me,  
16       you can take that seriously into account that as I  
17       understood it, we need to think more carefully  
18       about what the metrics should be for that specific  
19       goal. And it shouldn't only focus on the after-  
20       market, to use your words.

21              And I actually agree with that. We need  
22       to spend some more time thinking about how to  
23       measure whether or not that sustainable energy  
24       efficiency market is happening.

25              MS. TEN HOPE: Thank you.

1                   MR. MESSENGER: Excuse me, I just have  
2                   one question. Again, I'm probably going to keep  
3                   harping on this. I'm very interested in people's  
4                   perspective on this staff proposal to essentially  
5                   have a set-aside of three market areas, and have  
6                   utilities compete, if they want to, to manage one  
7                   of those three.

8                   And then to have two market areas where  
9                   the utilities would not be allowed to compete. Do  
10                  you have a reaction to that? Is that a good  
11                  thing? A bad thing? Not sure?

12                 DR. ELY: No, I have no opinion on that,  
13                 Mike. My general opinion is I think there is a  
14                 role for the UDCs; they are the end of the wire;  
15                 they do have the customer relations; and that  
16                 should be maximized.

17                 How that works out in an administrative  
18                 structure I'll leave to others.

19                 MR. MESSENGER: Thank you.

20                 PRESIDING MEMBER LAURIE: Thank you.  
21                 I'd like Mr. Vine to give his presentation before  
22                 lunch, then we'll take a break. Ed, from our  
23                 friends at the University of California.

24                 DR. VINE: Thank you very much. My name  
25                 is Ed Vine, representing the University of

1 California.

2 First I'll talk about the good things I  
3 liked about it. And then I'll focus on what we  
4 see as missing in the report, and perhaps when the  
5 report gets revised it can incorporate some of our  
6 concerns.

7 I'm looking on page 9 of the report  
8 where there's summary staff recommendations. And  
9 I think our organization in particular agrees with  
10 the finding that there is a significant net public  
11 benefit resulting from the continuation of these  
12 programs.

13 As I remarked at the previous workshop,  
14 the funding level that is indicated here is based  
15 on sort of a retrospective analysis. As we know  
16 there is another analysis that will be undertaken  
17 looking at what we feel is perhaps a more accurate  
18 estimate, looking at sort of the technical and  
19 economic market potential of energy savings. And  
20 I think that type of analysis may give you similar  
21 numbers, or perhaps different ones. And I hope  
22 that is sort of emphasized within the report that  
23 these funding levels will be re-examined after the  
24 study is completed.

25 I personally also share some of the

1 concerns about how difficult it is to form a  
2 nonprofit. And a new nonprofit. I've been  
3 involved in nonprofits, and they are relatively  
4 easy to set up and operate, depending on the level  
5 of effort that's required in terms of the  
6 responsibilities and duties. Mine have been  
7 associated with narrower goals and  
8 responsibilities. So I appreciate the effort.  
9 But I think it shouldn't be omitted right now.

10 Again, an independent review of the  
11 entire program is great, and I'm glad that it has  
12 been emphasized in the report. And I think that's  
13 a real plus when you do issue this report.

14 In terms of the program goals and  
15 program design, particularly the first bullet in  
16 terms of portfolios and market focus, I think  
17 that's a very good approach in determining how to  
18 go about designing and implementing programs.

19 The theory-based approach. Again, we've  
20 recommended that earlier. We think that is the  
21 correct approach. And the use of pilot  
22 initiatives, again, is a good example of how you  
23 can learn from doing things on a small level  
24 without putting all your funds into one large  
25 program and hoping it works out.

1                   The program should enhance system  
2           reliability and increase ability of consumers to  
3           reduce their use when electricity cost is high. I  
4           think this is a little bit different than what  
5           we've experienced in the last few years when our  
6           focus has been mainly on market transformation.  
7           There's going to be a balance between the two.

8                   I don't know what the correct  
9           percentages are, but we need to be cognizant of  
10          the needs down the road in the short term  
11          regarding reliability and what programs can do,  
12          and to address those concerns.

13                  I have been a proponent of the  
14          evaluation and feedback at all levels. I'm glad  
15          to see that's there. I think this is again a  
16          strong future of what you're recommending.

17                  And I won't emphasize the last bullet in  
18          terms of success. I think we've had a discussion  
19          with the last speaker and the staff here that  
20          there are other indices or metrics of success that  
21          probably need to be explored and described more  
22          fully in the report.

23                  So, I do commend the staff in trying to  
24          get a lot done in a little time. It's an  
25          important report. It's good to have public

1 participation and allowing the different  
2 stakeholders to represent their interests.

3 One thing that we do find frustrating is  
4 a missed opportunity which we've discussed before  
5 here and at different other forums, and that's the  
6 emerging technologies issue.

7 UC is a strong supporter of investments  
8 in energy efficiency and has been an active  
9 participant in the Energy Commission's public  
10 workshops and the future of the public goods  
11 charge energy efficiency program.

12 We're concerned not only with existing  
13 energy efficiency technologies, but with the  
14 development and commercialization of new  
15 technologies. An area known as emerging  
16 technologies.

17 And in this context we define emerging  
18 technologies to include measures that are one, not  
19 yet commercialized, but are likely to be  
20 commercialized, and cost effective to a  
21 significant proportion of end users in the next  
22 five to seven years.

23 Or, two, commercialized but currently  
24 have penetrated less than 5 percent of the  
25 appropriate market. This is based on some studies



1       that have been done recently, in particular by the  
2       ACEEE and the Davis Energy Group and some other  
3       people.

4               In our response we think there's a need  
5       for greater attention in the transition period, as  
6       well as in the post transition period, on emerging  
7       energy efficiency technologies, as an area that  
8       the CEC, CPUC, the CBEE, the utilities and other  
9       stakeholders should be more actively promoting.

10              In particular we recommend that the  
11       operational plan report and the transition plan  
12       report be revised to emphasize the CEC support for  
13       emerging technologies, and for more integrated  
14       strategic approach.

15              A little background. In the first CEC  
16       public workshop on this subject the UC recommended  
17       that stronger ties be developed between the  
18       research development and demonstration activities  
19       being funded by the CEC's public interest energy  
20       research or PIER program, and the market  
21       transformation programs being funded by, at the  
22       time, the CPUC's energy efficiency public goods  
23       charge program.

24              Stronger ties are needed because the  
25       energy efficiency products and services offered by

1       the research community should be placed into the  
2       marketplace via these market transformation  
3       programs as soon as possible, to maximize public  
4       benefits and because the research needs  
5       encountered in the implementation of these  
6       programs, the market transformation programs,  
7       should be addressed by the research community in a  
8       timely fashion.

9               And then we also recommend that a more  
10       integrated, systematic, and strategic approach be  
11       taken to promoting emerging technologies in  
12       California.

13              The CEC's draft reports barely mention  
14       emerging technologies. UC recognized the  
15       importance of other issues addressed in these  
16       reports, however we strongly believe that the lack  
17       of attention paid to these technologies represents  
18       a serious omission and reflects a policy  
19       environment in which emerging technologies are at  
20       a serious disadvantage compared to other issues on  
21       the CEC's agenda.

22              Accordingly, we hope that the CEC can  
23       redress this situation by supporting our  
24       recommendation which is to revise the draft  
25       reports to include a section on emerging

1 technologies and the need for more integrated  
2 systematic and strategic approach to emerging  
3 energy efficiency technologies.

4           Until recently utility efforts in  
5 promoting emerging technologies have been planned  
6 and implemented primarily by individual utilities  
7 with very little coordination among utilities or  
8 with other stakeholders.

9           The utilities program year 2000 and 2001  
10 program filings which were filed in September of  
11 this year have improved considerably in their  
12 stated intention to promote emerging technologies  
13 due to the insistence of the CPUC and the CBEE.

14           In fact, the utilities have proposed to  
15 create an emerging technologies coordinating  
16 council that will seek opportunities to coordinate  
17 efforts between each of the utilities' emerging  
18 technologies programs, as well as with the CEC's  
19 PIER program.

20           However, this is a proposal that the  
21 CPUC has yet to approve, and it is uncertain  
22 whether the CPUC will want to establish another  
23 entity to promote emerging technologies.

24           Therefore, as of today, there is no  
25 statewide strategic vision for the deployment of

1 emerging technologies and market transformation  
2 programs, and there may not be one unless the CEC  
3 becomes actively involved in this area.

4 In conclusion, the UC recommends that  
5 the CEC discuss in its reports a process for  
6 developing a more integrated systematic and  
7 strategic approach in emerging technologies and  
8 how this approach would be integrated with the  
9 programs that are already discussed in the  
10 reports.

11 One possibility might be the  
12 establishment of an administrator for emerging  
13 technologies, which would complement the other  
14 administrators of innovative initiatives,  
15 residential programs, nonresidential programs, new  
16 construction programs and reliability.

17 Just on a note, in terms of how that  
18 sort of complements the current structure, it is  
19 unclear to me, and I think maybe some  
20 clarification is needed in the report, on why you  
21 do have at this time, I guess, five boxes, and  
22 why, for example, the box on reliability and  
23 innovative initiatives couldn't come under each of  
24 the residential, nonresidential new programs. One  
25 would think they'd be tied into those sectors.

1                   But it isn't really clear in the report  
2                   why you really have to break them out. If there  
3                   is a need for breaking them out, then again I see  
4                   a need for breaking out the emerging technologies  
5                   so we don't lose sight of that factor.

6                   If you think after you hear from all the  
7                   presenters today that maybe you go back and just  
8                   focus on residential, nonresidential and new  
9                   construction, then the emerging technologies could  
10                  be a part or a subset of those.

11                  But if you stay with your current  
12                  structure, then I would argue you would definitely  
13                  need an administrator for emerging technologies to  
14                  keep pushing this.

15                  UC appreciates this opportunity to  
16                  provide specific recommendations on revising the  
17                  CEC's reports, and we look forward to your final  
18                  report.

19                  PRESIDING MEMBER LAURIE: Thank you, Mr.  
20                  Vine, comments are appreciated. Questions?

21                  COMMISSIONER PERNELL: Yes, Mr. Vine, I  
22                  have a couple. You indicated earlier that UC  
23                  would be doing a report on funding levels --

24                  DR. VINE: No.

25                  COMMISSIONER PERNELL: Is that something

1       that you guys are doing or --

2                   DR. VINE:  No.  I'm sorry.  We  
3       understand that the CEC has had a contract out, I  
4       believe, with the Rand Corporation to do an  
5       analysis of say potential energy savings.  And  
6       then I think from that one can estimate how much  
7       money is needed from that analysis.

8                   So what I was trying to say is that you  
9       may want to revisit your numbers that are in the  
10      report today, once this analysis has been  
11      completed.  But we're not doing it, ourselves.  
12      This is a contract through the Energy Commission.

13                  COMMISSIONER PERNELL:  Okay.  And then  
14      the other is the emerging technology that you're  
15      talking about, and I kind of see these, and  
16      evidently you see it differently, but I kind of  
17      see these as incorporated in each one of the  
18      boxes.

19                  There's room for emerging technologies  
20      if you're going to do anything innovative and go  
21      through that market transformation with the  
22      emerging technologies.

23                  So I see that in there.  And what you're  
24      suggesting is we add another box to specifically  
25      address emerging technologies through all these

1 different sectors?

2 DR. VINE: Correct. There are those two  
3 options. One is, as you said in the first  
4 instance, under each of residential and  
5 nonresidential and new construction. You could  
6 have emerging technologies within that.

7 But if you really want to be aggressive  
8 in supporting that, we think to highlight, to  
9 emphasize it, to create a separate administrator  
10 whose sole responsibility is to make sure these  
11 emerging technologies are being promoted in  
12 California.

13 Our feeling is if they're within the  
14 existing programs as they have been in the past,  
15 they maybe get lost because there's some other  
16 technologies people are promoting that are already  
17 out there and they're focusing on other delivery  
18 systems.

19 The difference here for emerging  
20 technologies, in many cases they require some  
21 long-term research, development and demonstration  
22 activities. In contrast to these other  
23 commercially available technologies. Really needs  
24 a strong focus on that.

25 COMMISSIONER PERNELL: Okay, and is

1       there -- maybe I should ask staff, do we have any  
2       other programs that addresses emerging  
3       technologies? Is that something that PIER  
4       addresses?

5                   MR. MESSENGER: Well, right now the  
6       level of coordination that I'm aware of is that  
7       our staff, some of our staff leads in PIER have  
8       come and talked at utility planning meetings about  
9       the results of some R&D projects and whether some  
10      of those technologies should be moved into  
11      programs.

12                   So there's sort of informal  
13      coordination, but as far as I know there's no  
14      formal coordination mechanism right now to take  
15      results from PIER research and identify emerging  
16      technologies, which then should be considered by  
17      program administrators.

18                   And what I hear Mr. Vine saying is he  
19      thinks that we should think about that process  
20      some more, and perhaps propose something in the  
21      final report based on his idea that this is an  
22      important area that's being missed right now.  
23      That's what I'm hearing him say.

24                   DR. VINE: And I'd like to add one  
25      point. At one of the workshops in front of the



1       CBEE Nancy Jenkins, one of the program managers  
2       for buildings in the PIER program indicated in her  
3       presentation that she was actually limited by what  
4       she could do in the market transformation side.

5               I'm not familiar with the language on  
6       how PIER was set up, but there seems to be sort of  
7       a wall where they can do only so much, but can't  
8       get involved in the actual market transformation  
9       activities.

10              And that's what I personally have been  
11      involved in for a number of years, trying to get  
12      those two areas integrated better.

13              COMMISSIONER PERNELL:   Okay, thank you.

14              MR. MESSENGER:   Just one question.

15              PRESIDING MEMBER LAURIE:   Feel free,  
16      Michael.

17              MR. MESSENGER:   Okay.   I interpreted  
18      your comments as saying you didn't think staff had  
19      done a sufficient, let's say, perspective analysis  
20      of cost effective potential or technical potential  
21      or economic.

22              And I'd be interested in getting from  
23      you off line what additional analysis you think is  
24      necessary to make it better.   Because I'm not sure  
25      that -- is going to satisfy what you want.

1                   So, from my perspective, given that I've  
2                   seen the contract statement on that, I would like  
3                   to hear from you either after the meeting or in  
4                   writing what things have we missed; what  
5                   additional things -- on page 26, for example, we  
6                   have a chart that talks about additional savings.  
7                   I'm interested in what additional analytical steps  
8                   you think are necessary to help link that to  
9                   funding.

10                  PRESIDING MEMBER LAURIE:   Mr. Abelson.

11                  MR. ABELSON:   Thank you.   Mr. Vine, just  
12                  a question in terms of your thoughts about how to  
13                  address the emerging technologies coordination  
14                  issue, which is an issue that the staff has long  
15                  supported here at the Energy Commission.   There  
16                  was actually an integration report drafted back in  
17                  1996 that strongly recommended that all the public  
18                  goods programs be carefully coordinated.

19                  But one of the other directives that we  
20                  have in the legislation is to try to develop an  
21                  administrative structure that's relatively simple  
22                  to administer.

23                  And my question to you is if we were to  
24                  look at the innovative programs portion of the  
25                  current draft, and make an effort to make clear

1       that we expect that within those innovative  
2       programs there would be an express portion devoted  
3       to addressing the valley of death, the need to  
4       deal with emerging technologies, and that's what  
5       we're looking for in the administrator for those  
6       programs, would that be a way to accomplish  
7       continuing relative simplicity, while still  
8       addressing the issue that you're concerned about?

9               DR. VINE: Yeah, it might be. Currently  
10       there's no mention, as you know, of the issue of  
11       the emerging technologies. And there's only a  
12       short description, I believe, in terms of the  
13       innovative program, itself.

14              The focus, if I remember correctly, is  
15       on getting new ideas out, perhaps new delivery  
16       systems. If there's an emphasis on emerging  
17       technologies, that might do it, as well.

18              MR. ABELSON: Thank you.

19              PRESIDING MEMBER LAURIE: Thank you, Mr.  
20       Vine. Okay.

21              MS. LEWIS: I'd just wanted to mention,  
22       since two speakers had talked about the metrics  
23       issue, is that we had pulled out the group  
24       discussion on the growth of the competitive  
25       industry and increase the number of informed

1 customers, because those were specific results  
2 that were mentioned in the legislation AB-1105.

3 But certainly your points are well taken  
4 that once we develop metrics, they have to be very  
5 much aligned with what we say the goals of the  
6 program are.

7 DR. VINE: Right. I guess, for the  
8 casual reader, if they just look at that bullet,  
9 it says here's success. And maybe you need to say  
10 here's some examples of success, or something  
11 along those lines.

12 Thank you.

13 PRESIDING MEMBER LAURIE: Thank you,  
14 sir, very much.

15 Ladies and gentlemen, I think at this  
16 time we'll take a break until 1:30 when we return.  
17 Mr. Miller will be --

18 MR. MATTHEWS: One small housekeeping  
19 matter, Commissioner Laurie.

20 PRESIDING MEMBER LAURIE: Okay.

21 MR. MATTHEWS: We have to lock this room  
22 during lunch, so take what you want during lunch,  
23 and we will unlock it before we resume. We'll  
24 unlock it at 1:15.

25 (Whereupon, at 12:00 noon, the workshop  
was adjourned, to reconvene at 1:30  
p.m., this same day.)

1 AFTERNOON SESSION

2 1:30 p.m.

3 PRESIDING MEMBER LAURIE: Mr. Miller.

4 MR. MILLER: Good afternoon, my name is  
5 Peter Miller. I'm representing the Natural  
6 Resources Defense Council. I wanted to thank you  
7 for the opportunity to present our comments here  
8 today.

9 I guess in starting I'm having trouble  
10 getting rid of the image that was presented  
11 earlier this morning of the staff draft as a ball  
12 of worms. In some ways I think that's right.  
13 It's a moving target. And there's some loose  
14 ends. So that may, in fact, be an apt --

15 PRESIDING MEMBER LAURIE: Well, let me  
16 offer a correction, Mr. Miller. I don't think the  
17 comments were the staff draft was a ball of worms,  
18 but rather the problem was a ball of worms.

19 MR. MILLER: Aha.

20 (Laughter.)

21 MR. MILLER: Then I would definitely  
22 support that as a characterization of the problem.

23 Just to sort of preview or provide an  
24 overview of our comments, I have two overview  
25 items. The first is that the page numbers in our

1       written comments refer to the draft as I printed  
2       it out from the electronic version. And those  
3       page numbers are different than the printed  
4       version that was distributed. The same as Dick  
5       Ely's page numbers, so we have the same software,  
6       I guess.

7               But in terms of finding the sites in our  
8       written comments, you're going to have to sort  
9       around a little bit in the printed draft.

10              More substantively, I guess, as a  
11       preview or an overview of our comments, I'd have  
12       to say that at this point NRDC would not support  
13       much in the staff draft. We would not support the  
14       program design recommendations, the funding  
15       levels, the administrative structure or the  
16       transition plan.

17              And I've tried to outline our concerns,  
18       given the limited time that we had to review the  
19       draft and prepare our comments, we weren't able to  
20       touch on all of the individual concerns, but  
21       instead tried to highlight our principal concerns.

22              And if there's an opportunity to provide  
23       more detailed comments, we would be glad to do so  
24       in any way that's going to be productive in  
25       support of the Commission's effort to get this

1 report out on time.

2 So, jumping right in, I've organized the  
3 comments in the same order that the staff draft is  
4 organized, so I'll start with program design  
5 issues.

6 And the first fundamental problem we  
7 found with the program design chapter of the staff  
8 draft, is the inconsistency between the supporting  
9 evidence or the lack thereof, and the conclusions  
10 that are drawn.

11 And in particular with regard to market  
12 transformation, which as the staff draft notes,  
13 there is widespread disagreement about what the  
14 term means. There's limited theoretical  
15 underpinnings for that term. Measurement of  
16 market transformation in any case will take a lot  
17 of time, and is difficult to measure.

18 And that we're at the beginning of a  
19 learning curve. Points that I would agree with.  
20 But what concerns me is the discussion that  
21 follows, which appears to present market  
22 transformation as a fully formed proven approach  
23 to program design and implementation. One that's  
24 successful and can successfully replace much of  
25 what we've done up to this point.

1                   And as a result, a disconnect between  
2                   the uncertainty that the report acknowledges, and  
3                   the certainty that the report appears to recommend  
4                   in terms of how we would move forward, gives the  
5                   feel of a house that's floating on a foundation of  
6                   air. There's nothing under there holding up that  
7                   structure.

8                   So that's a principle problem with the  
9                   conclusions. We think it's more appropriate for  
10                  the report to acknowledge the uncertainty, but to  
11                  note that there is some promising opportunities  
12                  that should be pursued. And to leave it at that.

13                  I don't know what more needs to be done,  
14                  or can rightfully be done given the uncertainty  
15                  and the lack of strong evidence or positive  
16                  examples.

17                  A similar inconsistency is apparent in  
18                  the review of current programs. As earlier  
19                  commentary has noted, the staff draft takes a look  
20                  at the nonresidential SPC program in 1998 and  
21                  finds that it's severely lacking. But the staff  
22                  report also notes that it's too early to assess  
23                  the success of 1998 programs, and we're unlikely  
24                  to be able to determine whether these are  
25                  achieving market effects and market transformation



1       for a number of years.

2               And that inconsistency is troubling.  
3       How are we able to draw these conclusions when the  
4       staff draft, itself, acknowledges that it's too  
5       early to draw these conclusions.

6               The second fundamental problem that we  
7       found with the program design chapter is confusion  
8       between means and ends. And this has come up at  
9       previous workshops.

10              As NRDC and other parties have  
11       repeatedly stated, we believe that market  
12       transformation and resource acquisitions are  
13       means, they're program strategies that both can  
14       help us to achieve the ultimate objective or goal  
15       of cost effective energy savings.

16              We thought there was broad agreement  
17       over that point, but the staff draft appears to  
18       instead conclude that the differences between  
19       resource acquisition and market transformation,  
20       and now reliability focus programs, is a  
21       fundamental difference. And one that is linked to  
22       different objectives. Short term versus long  
23       term. Reliability or peak versus kilowatt hour  
24       savings. We don't believe that's the case.

25              Instead, I think the evidence is pretty

1 clear that programs in the past that have used  
2 tactics such as financial incentives, that have  
3 been targeted at measurable verifiable savings  
4 have saved both peak energy and have provided  
5 long-term market effects. And, in fact, market  
6 transformation. And that's documented.

7 Similarly we think that more market  
8 transformation oriented approaches can reduce peak  
9 and must ultimately provide cost effective energy  
10 savings in order to be valuable, in order to be  
11 worth pursuing.

12 So there's a multitude of program  
13 strategies. There's tactics that even underlie  
14 those, such as financial incentives and  
15 information. And they all should be directed at  
16 the same ultimate goal of cost effective energy  
17 savings.

18 And there's little need or value in  
19 elevating the differences, whatever differences  
20 might exist, between different program strategies  
21 to the level of determining what funding levels  
22 should be provided to different strategies, or  
23 which administrator should be hired for different  
24 program areas.

25 The third fundamental problem that we

1 identify with the program design section of the  
2 staff draft is a failure to clearly identify what  
3 is intended by reliability focused programs. And  
4 to identify why these programs belong in the PGC  
5 energy efficiency program portfolio.

6 Included in the staff draft are a number  
7 of attempts to try and identify some of the things  
8 that might be included in this group of programs.  
9 And items that are included, there's a variety of  
10 disparate items that are included, such as program  
11 implementation decisions.

12 You know, how are we going to implement  
13 these decisions. Such as, direct installation of  
14 new technologies, financial incentives,  
15 reliability programs. There are rate design  
16 proposals that are included in reliability, such  
17 as load shedding and other interruptible  
18 strategies.

19 And there are distribution  
20 infrastructure measures such as meters,  
21 installation of time-of-use meters. That's  
22 included in the reliability.

23 Now, the range is so broad to include  
24 things that are funded elsewhere through rates by  
25 a variety of different entities, or things that

1       are not really funded programs, but instead  
2       regulatory decisions such as rate design.

3               Or, at the opposite end, just sort of  
4       strategies or tactics such as direct installation  
5       of technologies. It's impossible at this point to  
6       evaluate whether this is appropriate for the PGC  
7       energy program, because there's not a clear  
8       explanation of what is to be included.

9               And until there's a clear identification  
10      of why this should be included in the PGC program,  
11      what it's going to include, there's going to be, I  
12      think, considerably opposition both within the  
13      energy efficiency community and certainly outside  
14      of the energy efficiency community.

15              I think it's important to identify why  
16      these things are properly part of an energy  
17      efficiency portfolio.

18              I think it's also important to note that  
19      programs in the past have had substantial benefits  
20      through peak demand reductions. And I would  
21      expect should continue to do so.

22              While it's true over the past couple of  
23      years programs have been valued only with regard  
24      to the kilowatt hour savings, it doesn't mean that  
25      they haven't had peak kilowatt impaction. And

1 prior to 1998, in fact, those kilowatt hour  
2 savings, kW savings were taken into account.

3 So, I think it's important before the  
4 report is released that that area be much more  
5 carefully considered and clearly delineated.

6 On the program funding chapter, as we  
7 noted at the previous workshop our position is  
8 that unless there's a clear and strong  
9 justification for changing, for substantially  
10 changing the minimum funding level that was  
11 established in AB-1890, the political obstacle to  
12 changing that minimum funding level suggests that  
13 the default should be that minimum funding level.

14 We didn't find in this report that  
15 strong justification that we feel would be needed,  
16 nor to recommend a change in the minimum funding  
17 level. Instead the staff draft recommends a  
18 modest increase in the minimum funding level based  
19 on a variety of factors that we did not find to be  
20 compelling enough to justify the effort it will  
21 take to change that minimum funding level.

22 We therefore recommend that the  
23 Commission, in its final report, recommend the  
24 continuation of the current minimum funding level  
25 with the possible exception of taking into account

1 an inflation adjustment, given that the AB-1890  
2 level was based on 1996 programs.

3 There are a couple of other points that  
4 we raised with regard to the program funding  
5 level. The only one I really want to raise here  
6 is some confusion about the analysis and the  
7 conclusion, which is that the analysis in the  
8 program funding section takes a look at historical  
9 programs. And evaluates potential for future  
10 programs with regard to current activities and  
11 past activities funding levels.

12 And there's a table that allocates the  
13 funding and proposes a funding level of \$250  
14 million in program funding by sector, residential,  
15 nonresidential and new construction.

16 But a couple pages later, and at this  
17 morning's presentation, there's also a table that  
18 reallocates that funding by program strategy,  
19 sustainability ability focused, reliability  
20 focused, and I'm not recalling the third, but I  
21 think it was -- it was broken out in that manner.

22 And there really doesn't seem to be  
23 anything that underlies that translation, and  
24 instead it simply seems to indicate that all of  
25 the program funding recommendation, the entire

1       \$250 million of programming funding recommendation  
2       goes to sustainability focused programs.

3               And if I'm reading the staff draft  
4       right, that approach would, in fact, exclude most  
5       of current and previous program designs.

6               So there seem to be proposed in that  
7       table a complete transformation of current  
8       programs to a new set of programs, but we're going  
9       to keep that same funding level. And I think  
10      there's a disconnect there that needs to be either  
11      cleared up or eliminated.

12              Okay, now we get to the administrative  
13      section which I think is the most fundamental and  
14      problematic section of the report for us.

15              We recommended an evolutionary approach  
16      to the administrative structure in which the  
17      current structure would be largely maintained in  
18      the near term, and new approaches could be tested.  
19      In particular, a contract administrative approach  
20      could be tested. We felt that this was  
21      reasonable, given the relative success of the  
22      current program, and difficulty of transitioning  
23      to a new approach.

24              The staff draft rejects this approach.  
25      And to summarize, I think it's important to

1 summarize, at least from my perspective, because  
2 it may be that I'm not reading the report  
3 correctly, but the way I read it, the staff draft  
4 recommends dividing the PGC fund into five  
5 administrative areas and conducting a bid process,  
6 a contract bid process for program administrator  
7 for all five areas, the contract to take effect no  
8 later than the beginning of 2002.

9 The staff draft, just to repeat, the  
10 staff draft proposes contracting out all the  
11 funding immediately, as of 2002, simultaneously  
12 for an entire program. The staff draft also  
13 includes a discussion, a recommendation to provide  
14 the current administrators with the sole  
15 eligibility to bid for three out of the five  
16 program areas, slightly less than half the  
17 funding.

18 And I believe this is an aspect that the  
19 staff draft suggests would mitigate the otherwise  
20 revolutionary nature of the proposal. But having  
21 read this a couple times through, we conclude that  
22 this approach would just make the transition more  
23 complicated and even less for the following  
24 reasons.

25 First, a winning bidder, and I'm talking



1       here about the areas that would be solely limited  
2       to the current administrators, a winning bidder, a  
3       utility would have to administer the program  
4       statewide rather than in its own service  
5       territory, as is currently the case.

6               So they would have to revamp their  
7       program delivery infrastructure to cover the  
8       entire state rather than their own current service  
9       territory. And that's a substantial change.

10              Moreover, the utility, the  
11       administrator, would have to shift to a  
12       contractual framework rather than a regulatory  
13       framework. And that's a substantial change.

14              In addition, the contract would only  
15       apply for two years, and so it's a narrow window,  
16       a short window after which it would be bid out  
17       again. And that contract would not even be  
18       awarded. And I want to go through this because  
19       it's important to identify all those clauses.

20              The contract, to these current  
21       administrators, would not be awarded if one, in a  
22       separate hearing or proceeding parties  
23       convincingly demonstrate that reserving one or  
24       more of these market sectors for the UDCs to  
25       manage on an interim basis is not in the public

1 interest; or two, if the UDCs do not provide  
2 definitive proposals that make a compelling case  
3 related to the competency to manage the programs.

4 Or, three, if they fail to identify  
5 steps the UDCs will take on a proactive basis to  
6 minimize any potential conflicts of interest with  
7 their parent company's desire to maximize profits  
8 from the sale of more energy.

9 Or, four, if insufficient or inadequate  
10 proposals are submitted.

11 In other words, despite statements to  
12 the contrary at the hearing this morning and in  
13 the staff draft, all of the money would be  
14 contracted immediately. More than half would go  
15 to new administrators. The rest would possibly go  
16 to a subset of the utilities for only two years in  
17 a way that would dramatically change both the  
18 financial and the programmatic basis for the  
19 programs.

20 Unless, for a variety of reasons and at  
21 any point in the process the Commission decided to  
22 cancel that bid process and instead simply bid out  
23 all of the funds to new administrators.

24 What I've heard this morning makes it  
25 even more complicated because the staff has said

1       that they're not even sure that they want to have  
2       five program areas. That it might be as few as  
3       three -- well, what happens to those three  
4       reserved areas if there's only three program  
5       areas.

6               So it's not even clear that there's  
7       going to be three reserve program areas. So, I  
8       don't see that approach as something that  
9       mitigates the evolutionary -- the project, or that  
10      in any way attempts to provide an evolutionary  
11      approach to furthering the program's objectives.

12             Another aspect of the administrative  
13      structure chapter that I think is worth noting  
14      here, and this is a more subtle problem, is that  
15      my reading of the report is that there's a  
16      confusion of rolls and a failure to clearly  
17      identify what is the intended role of the  
18      independent review panel.

19             And what I've heard this morning is that  
20      there's in fact two panels, there's an advisory  
21      panel and independent review panel, as there is  
22      currently with the PIER program. And I didn't  
23      catch that from my reading of the report.

24             I think it's still important that the  
25      Commission think through more carefully what the

1       role of this advisory panel is. I mean this is  
2       essential, and the problems that are currently  
3       being debated and litigated at the PUC are  
4       evidence of the need to clearly identify and  
5       present the roles of an advisory panel.

6               The reference to CBEE programs and CBEE  
7       philosophy and practice is part and parcel of this  
8       confusion. And it is exactly the type of problem  
9       or misnomenclature that can lead you into  
10      problems. Because the CBEE is only an advisory  
11      body, it does not have any independent decision  
12      making authority. And it's completely  
13      inappropriate to refer to current PGC program as  
14      CBEE programs.

15             They're just an advisory body. And it  
16      demeans the roles of other parties that  
17      participated and have been active in developing  
18      those programs and participating in the  
19      development of those programs.

20             And it mischaracterizes the role of the  
21      PUC whose ultimate responsibility it is to approve  
22      those programs.

23             Moving on to the transition plan. I  
24      think the most glaring problems, and the one I'm  
25      going to focus on here with the transition plan

1 report are the dramatic under-estimate of time and  
2 resources it would take to implement the staff's  
3 proposal.

4 The PUC, and I've got direct experience  
5 with this, as do some Commission Staff Members,  
6 the PUC tried to contract out program  
7 administration. And it took them just over 18  
8 months to cancel the RFP, at which point they had  
9 finally come to grips with the magnitude of the  
10 problems.

11 The PUC -- the RFP had not been  
12 released, and they had finally realized, wow,  
13 these problems are insurmountable.

14 Now, I'd expect and hope that the Energy  
15 Commission can do a better job. But I think that  
16 experience should give one pause. The Energy  
17 Commission actually took some positions and argued  
18 that the PUC process could be done a lot quicker  
19 than it was, and I think they were wrong at that  
20 point. You were wrong at that point. You under-  
21 estimated the time it would take to do it.

22 And I'm here today to tell you again  
23 you're under-estimating the amount of time it will  
24 take to contract out \$290 million in  
25 administrative contracts. It will take -- you've

1       estimated it will take six months to draft up the  
2       RFP and the contract documents -- not the contract  
3       documents, but just the solicitation. And I would  
4       expect that it would take a lawyer -- it will take  
5       the lawyers, not one, but multiple lawyers, six  
6       months to review those, alone.

7               The staff draft estimates that it will  
8       take about six months to complete that  
9       solicitation, and get to a signed contract. I  
10      think that a more, a minimum estimate of the  
11      amount of time it will take that you should  
12      allocate to get to that point is 18 months.

13             And I think the PUC experience supports  
14      that, and I think that the current estimates are  
15      completely unrealistic for just about every step  
16      in the process.

17             I think it's worth noting that the  
18      schedule that's here assumes everything goes  
19      smooth as ice. And as the report, itself, notes,  
20      the contract for the solicitation for the three  
21      areas that were reserved for the incumbent  
22      utilities, itself, could be canceled at any point  
23      in the process. Even after the proposals have  
24      been submitted.

25             And so if, in fact, that occurs and

1       there are, as I noted, a variety of reasons why  
2       that Commission would be given the authority to do  
3       that, three out of the five program areas would be  
4       without an administrator. The programs start in  
5       2002.

6               If this is the schedule that's adopted,  
7       I'd forecast a train wreck. And I think it will  
8       be extremely, extremely damaging to the programs.  
9       And I think it's something that needs to be  
10      reconsidered.

11             I think, as well, that the staff  
12      estimate of 30 staff is substantially low. And I  
13      think that's confirmed by looking at the current  
14      number of Commission Staff that are working on  
15      these programs before the programs even  
16      transferred here, or by the number of program  
17      staff that work on other PGC programs. And I  
18      think that should be reconsidered, in particular.

19             For example, the idea that one lawyer  
20      would be able to review and sign off on \$290  
21      million in contract solicitations does not seem to  
22      me to be reasonable. I've worked with lawyers  
23      before.

24             I'll leave it at that. Those are our  
25      high points in terms of concerns.

1                   PRESIDING MEMBER LAURIE: Thank you.

2           Commissioner Pernell, do you have any questions at  
3           this point?

4                   COMMISSIONER PERNELL: I would ask staff  
5           to respond if they have any response before I ask  
6           questions. Any response to --

7                   PRESIDING MEMBER LAURIE: Let me ask,  
8           and I'd like response be organized, so let me ask  
9           Mr. Sugar to make inquiry of your staff as to who  
10          would like to respond and what they're going to  
11          respond to.

12                   Even better, let me ask a question, and  
13          why don't you determine, Mr. Sugar, the manner in  
14          which you would like to respond. You can call on  
15          some of your staff to respond to specific points  
16          or not.

17                   So, why don't you just give it some  
18          thought as to what mechanism you want to use to  
19          make inquiry of Mr. Miller.

20                   Peter, when you talk about the  
21          timeframes that you think will be necessary, do  
22          you think it would just take so long because a)  
23          it's the Energy Commission, b) it's government, c)  
24          it's a lot of money, d) all of the above --

25                   (Laughter.)



1                   PRESIDING MEMBER LAURIE: The point  
2           being that when we discuss, for example, setting  
3           up the nonprofit. I know you can set up a  
4           nonprofit in three days, I've done it, too. The  
5           point being that there are not legal statutory  
6           criteria saying it has to be six months and 18  
7           months. But, if folks had their act together, in  
8           theory, it could be done.

9                   So do you think it's the basic nature of  
10          government? Do you think it's the Commission?  
11          What factors are you using as a foundation to  
12          argue that there's been such an under-estimation  
13          of necessary time and staff resources?

14                  MR. MILLER: I have to answer all of the  
15          above, plus a couple more. And it's in large part  
16          the confluence of all those factors that I think  
17          will result in a longer time period than anyone  
18          thinks likely.

19                  So, let's go by -- I think to the point  
20          about the nonprofit is an important one, and in  
21          fact, looking at the staff draft there's a lot of  
22          discussion of how difficult it will be to staff up  
23          and scale up a nonprofit.

24                  And I think there's perhaps a little bit  
25          too much caution there. But, that same sort of

1       caution should be implicit in the review and  
2       discussion of transference of programs to the CEC,  
3       and issuing these contracts.

4               It's going to be difficult to scale up,  
5       even if it's only 30 staff. It's not easy to hire  
6       30 good staff. It's not easy to contract out \$290  
7       million. It's not easy to pass legislation.

8               All of these steps are going to take  
9       more time than we think. And the staff draft  
10       appears to suggest that it'll take less time than  
11       we think. And instead of building a realistic  
12       estimate of the time allocation, it appears that  
13       what's happened is that the deadline is January 1,  
14       2002, and the time from now until that point was  
15       simply divided up in a way, in the most reasonable  
16       way possible to get us there.

17               But it doesn't mean that we're going to  
18       get there. So, --

19               PRESIDING MEMBER LAURIE: Well,  
20       perhaps --

21               MR. MILLER: -- let me try and respond  
22       to your specific question which is, I think the  
23       fact that it is \$290 million is certainly a very  
24       strong factor. I think the fact that this is a  
25       government agency, and that there are problems,

1 obstacles that a private sector firm would not  
2 face, is a definite factor.

3 I think one that's not noted at all is  
4 that this has never been done before. No one has  
5 ever contracted out for program administration.  
6 It's currently being tried in a couple of areas,  
7 but nobody's ever done it, and certainly never on  
8 this scale.

9 It's been tried in the PUC and we know  
10 what happened there. So that is the experience  
11 base. And I think that should give us pause.

12 So it's all of the above, plus the fact  
13 that it hasn't been done before.

14 PRESIDING MEMBER LAURIE: Well, part of  
15 the optimism, frankly, may have come from the  
16 Commissioners and the Committee, which is, frankly  
17 stated, optimistic about properly managed programs  
18 being able to deliver in a timely manner if  
19 properly managed.

20 The numbers don't scare me. I generally  
21 have had, in my experience, a more difficult time  
22 negotiating a \$10,000 contract than \$1 million  
23 contract. I don't think the size counts in that  
24 case.

25 I'm trying to get the fundamental

1 position that you're stating. Would it be the  
2 preference of NRDC that basically the program just  
3 continue on course pretty much as is, and be  
4 extended out for another period of time and test  
5 the waters some more, and see then if additional  
6 changes have to be made?

7 MR. MILLER: No. I mean our preference  
8 would be to adopt what we recommended earlier,  
9 which is to try out some new approaches, to pilot  
10 test them at the same time that governance is  
11 undergoing a dramatic shift from one agency to  
12 another.

13 So we think our proposal does recommend  
14 substantial changes in the programs. Not just in  
15 the programs but in the governance, in the  
16 administrative structure. Programs are, of  
17 course, continuously changing. So there are --

18 PRESIDING MEMBER LAURIE: You know,  
19 just --

20 MR. MILLER: It's an evolutionary, it's  
21 a slower change than contemplated in the staff  
22 draft.

23 PRESIDING MEMBER LAURIE: Okay, and  
24 perhaps I have to go back and read some of your  
25 earlier material, but I had thought that the basic

1 framework of NRDC's proposal was to offer some  
2 change, while identifying also a sector of  
3 continuum.

4 MR. MILLER: Yes.

5 PRESIDING MEMBER LAURIE: And I kind of  
6 thought that's what we were doing here, frankly.  
7 And so I'm thinking maybe it's a question of  
8 degree of change. And once you get into degrees  
9 there's no right or wrong answer, frankly.

10 Now, given all that, Mr. Sugar, have I  
11 now given you enough time to think about how you'd  
12 like to have staff respond?

13 (Laughter.)

14 PRESIDING MEMBER LAURIE: Because I can  
15 go on if you need --

16 (Laughter.)

17 MR. SUGAR: You could stretch. I guess  
18 one way is to ask team leads if they would care to  
19 respond. There were a couple of just comments I  
20 have, but they can wait. Is there any particular  
21 order, the order in which we started -- Kae, would  
22 you care to just comment on program issues?

23 MS. LEWIS: All right, I can talk about  
24 the program design ones. I think actually for the  
25 most part we're in agreement with you. We do

1 definitely agree that market transformation and  
2 resource acquisition are --

3 PRESIDING MEMBER LAURIE: Can the  
4 audience hear this okay? Is it being amplified?

5 MS. LEWIS: I believe that we agreed  
6 that market transformation and resource  
7 acquisition are different strategies. But we're  
8 suggesting that they can be tailored to achieve  
9 specific objectives, be they long-run or short-run  
10 objectives.

11 And we're recommending in this report  
12 that we consider reliability as an objective that  
13 can be addressed with energy efficiency solutions.

14 Just to kind of complicate this, though,  
15 I would certainly agree with you that these  
16 strategies are not mutually exclusive in their  
17 results. And that it's definitely true that many  
18 programs designed to capture kWh do, of course,  
19 capture kW as well.

20 But I think an important point here is  
21 that objectives need to be made clear in matching  
22 these strategies with the results that are  
23 intended, and I think that's one problem that we  
24 were addressing from the CB experience.

25 We were talking about enhancements, the

1 principles that we laid out we were calling  
2 enhancements on the current process. And we think  
3 that they're applicable, really, to any program  
4 type, whether it's market transformation or  
5 resource acquisition or what-have-you.

6 These are not market transformation  
7 principles. They're used in many different fields  
8 from social services. They've been around for  
9 some time and we're suggesting that we apply those  
10 to program design and evaluation here.

11 Another point is on the SPC program you  
12 said that we're saying it's not working, but it's  
13 also too early to tell. I think what we're saying  
14 is a little more qualified than that.

15 We're suggesting that if these  
16 enhancements were to be applied to the SPC program  
17 that most likely some of those early shortcomings  
18 that were identified in this energy report  
19 probably would have led to some program  
20 modifications.

21 So, we're agreeing with you that to the  
22 extent -- well, first of all, that program wasn't  
23 designed to be a market transformation program,  
24 but if it had been it would have needed more time  
25 to identify results.

1                   But regardless of what type of program  
2           it is, using these enhancement principles could  
3           identify problems earlier on in the process and  
4           lead to modifications.

5                   So the bottomline is I don't think we're  
6           really disagreeing with you on that.

7                   MR. MILLER:   Okay.

8                   COMMISSIONER PERNELL:   Do we agree that  
9           we need more time to evaluate the program, more  
10          than two years?   Is that --

11                  MS. LEWIS:   For some results.

12                  MR. MESSENGER:   Can I speak to that?   I  
13          think there's a lot of miscommunication happening  
14          here.   And there's different degrees of  
15          evaluation.   There was a report done for the SBC  
16          that evaluated the first nine months of operation  
17          and gave some preliminary results.   And people  
18          disagree to this day about whether you should take  
19          action on those preliminary results or not.

20                  But I think people are also saying in  
21          this report that it may take two or three years  
22          ultimately to determine whether a program achieved  
23          all of its objectives, or most of its objectives.  
24          But that is not saying that you need to wait three  
25          years to make changes in the design based on



1 preliminary results.

2 So there's some differences in nuance  
3 there that are being sort of swept underneath the  
4 table here and pointed out as inconsistencies.  
5 But I think the problem is that there's some  
6 miscommunication in terms of evaluation.

7 Because certainly I don't think the  
8 Commission could ever live with we're going to  
9 fund programs for three years, do no evaluation  
10 until the third year, and then decide whether they  
11 worked or not. That doesn't make much sense to  
12 me.

13 I think the more fundamental problem is  
14 to what extent this report even needs to address  
15 or decide, as Peter was saying, whether you need  
16 to have resource acquisition strategies or market  
17 transformation strategies, or some other kind of  
18 strategy to pursue your goals. And we can hash  
19 that out.

20 But personally I don't believe that the  
21 Legislature needs to address that problem. That  
22 is not a problem, from my perspective. It's just  
23 different strategies. What the Legislature needs  
24 to be involved in is what should the objectives of  
25 the program be, and that's where we should be

1 focusing. And I think we agree with Peter there.  
2 Peter's saying be clear about what your objectives  
3 are.

4 MR. MILLER: The problem I'm facing in  
5 this with this clarification is I'm hearing you  
6 say one thing and I'm looking at the report, you  
7 know. I don't think the Legislature's in the room  
8 today. And so I'm looking at what's written on  
9 paper, and that's not what I'm reading. What I'm  
10 hearing you guys say is not what I'm reading. And  
11 that's the confusion I'm faced with and the  
12 difficulty. You're telling me you agree with my  
13 comments, but the report doesn't agree with my  
14 comments.

15 And so to the extent that this is going  
16 to be taken into account and revised to address  
17 that, that's well, great, you know, can't argue  
18 with that.

19 But to the extent you're saying the  
20 report already says what we're recommending it  
21 should say, I do take issue with that.

22 MR. MESSENGER: I think there's  
23 differences in interpretation --

24 PRESIDING MEMBER LAURIE: Understand  
25 that there is substantial work to be done in the

1 editing of this document. We will not be giving  
2 the Legislature a 60-page document. So there is -  
3 - we'll be giving the Legislature a 27 and a half  
4 page document --

5 (Laughter.)

6 PRESIDING MEMBER LAURIE: Isn't that  
7 right, Mr. Schwartz? Yes.

8 Mr. Sloss.

9 MR. SLOSS: In terms of the comments  
10 about the administrative structure, I guess we  
11 assumed that -- well, first of all we've tried to  
12 respond to the questions that were laid out in the  
13 legislation.

14 And I'm not sure if -- because if I'm  
15 reading this correctly, the issue of whether or  
16 not we have to speak to reliability or programs  
17 that allow consumers to respond to prices, speak  
18 to market transformation, we do have to say  
19 something about that because it's right here. We  
20 have to speak to market transformation as a  
21 strategy.

22 MR. MILLER: Sure.

23 MR. SLOSS: And so I understand why  
24 that's in there. From the standpoint of the  
25 length of time it would take, we assume that our

1 request for changes in the procurement process are  
2 going to be agreed to, because if they're not we  
3 can't do this. I don't think there's any question  
4 about that.

5 We assumed that there would be some work  
6 that would begin immediately on contracts with the  
7 utilities that will be continuing through 2003.  
8 By the way, again, the time schedule is based upon  
9 the law says, tell us what you would do to  
10 transfer this function from the PUC to you guys,  
11 the CEC, on this date. So we tried to figure out  
12 we're going to do that.

13 So on January 2nd, after the report goes  
14 over January 1st, we'll start working with the  
15 utilities and others to develop the terms and  
16 conditions and scope of contracts to continue the  
17 programs that are continued and to bid those that  
18 can fit in that process.

19 So we have to assume that some things  
20 are not maybe smooth as ice, but some things do  
21 kind of click along. And if they don't, again we  
22 don't get changes to the procurement requirements  
23 then we have a problem.

24 But we also tried to respond in this  
25 report to several issues that have to do with

1 things like conflict of interest. Had to do with  
2 market shares and all that sort of stuff. And I  
3 don't have your previous, you know, your document  
4 in front of me right now, but it would help me to  
5 understand, you know, how the evolutionary  
6 proposal actually gets the responsibility for the  
7 program from the PUC to us, and then how it  
8 addresses these other issues of market  
9 transformation, of conflict of interest, who  
10 should do what in what program areas, because I  
11 don't -- maybe that's something we can talk about  
12 later.

13 MR. MILLER: I can certainly respond to  
14 that. One, on the issue of market transformation,  
15 that is the legislation says you need to address  
16 it. But I think we would recommend that you  
17 address it by saying this is interesting and  
18 promising program strategy approach that we've  
19 begun to explore over the past four or five years  
20 in current programs and expect to continue and  
21 expand in the future.

22 It's something that will increase our  
23 ability to provide more cost effective savings at  
24 lower cost, we hope. But not use that as -- the  
25 Legislature doesn't say you have to use market

1 transformation as the foundation for determining  
2 the level of funding, the number of program  
3 administrators, or other such issues which the  
4 staff draft does, in my reading of it.

5 So that's our position, that would be  
6 our recommendation on the question of market  
7 transformation and the requirements of the  
8 legislation.

9 As far as the schedule goes, we don't  
10 interpret the transfer of oversight responsibility  
11 from the PUC to the CEC to necessarily imply that  
12 all administrative responsibility must be done  
13 through a contract with the Energy Commission.

14 And our evolutionary proposal recommends  
15 an alternative under which current administrators  
16 would continue to operate under a regulatory  
17 framework with oversight, policy oversight being  
18 provided by the Energy Commission. And we think  
19 that that's something that's feasible to do by  
20 January 1, 2002.

21 COMMISSIONER PERNELL: How would that  
22 provide competition? I mean what I'm hearing you  
23 say is that your proposal is to leave it as it is,  
24 and just have the Energy Commission an advisory  
25 board because that's what we would be, and how

1 does that allow other players into the market?  
2 That's my question.

3 MR. MILLER: Two answers. One, I think  
4 you would need to write the legislation, the fact  
5 that the Energy Commission would be, in fact, the  
6 oversight, would provide policy oversight. And  
7 the PUC's authority would be limited on that  
8 regard.

9 And that's what would be required to  
10 insure that there wasn't repeat litigation, issues  
11 weren't relitigated at the PUC in endless  
12 administrative proceedings. I think that's  
13 something that's essential to get clarified.

14 And the second question was?

15 COMMISSIONER PERNELL: Competitive.

16 MR. MILLER: Competition. We don't  
17 believe that competition for the administrative  
18 role is a principal goal of the program. We  
19 believe that the principal area for competition  
20 where we really want to create the market is in  
21 the market for energy efficiency goods to  
22 services, in the implementation market. And  
23 that's where the principal area of competition is.

24 Agreed you want to try and minimize your  
25 administrative costs and make that administration

1 function as efficient as possible. And we think  
2 you should test out new approaches to that, to try  
3 and move in that direction. But, we don't believe  
4 that it's appropriate to try and create a  
5 competitive market for the administrative function  
6 because, you know, that's a planning. It's like  
7 making the Energy Commission compete for that  
8 oversight role, you know, where that's a  
9 competitive function. We don't think that's  
10 appropriate, either.

11 You assign the responsibility for that.  
12 You try and do it in an efficient and effective  
13 way. But the competition is in the market, not in  
14 that administrative role.

15 COMMISSIONER PERNELL: Right, and this  
16 is just my last point on that. And I agree that  
17 the implementers is where you bring more folks  
18 into the arena. However, I would also continue to  
19 say that you don't just have the same  
20 administrators and expect everything to run  
21 smoothly down below if there is -- five years from  
22 now, if we have the administrators and they have  
23 certain interests, as we all do, I don't think  
24 that by allowing the captain to continue running  
25 the ship that it's going to change the course,



1       because the captain is going to drive the ship to  
2       the -- I mean he's going to steer the course the  
3       same way he's always been steering it, which is  
4       probably the way that he thinks it should be  
5       going. And I'm not arguing that point.

6               But the point I'm arguing is the  
7       administrators also should be looked at. You  
8       can't just say take 95 percent of this public  
9       goods charge and you guys run it, but make sure  
10      you contract out and give these guys a little  
11      piece and those guys a little piece, but just keep  
12      the ship moving.

13             And I'm not comfortable with that  
14      scenario.

15             MR. MILLER: All right, and we've  
16      proposed a transition approach which is, as you  
17      pointed out, try a new approach, get it started,  
18      you know, test out a new approach.

19             The staff draft proposes changing  
20      everything immediately, 100 percent turnover,  
21      nothing stays the same. Complete transition  
22      January 1, 2002. And we think that that's --  
23      certainly deals with the problems of conflict of  
24      interest, and whatever inertia is in the current  
25      program. But there ain't anything there to pick

1       you up and, you know, you're stuck in the middle  
2       of the ocean. You're floating there, when the old  
3       captain sails away.

4               COMMISSIONER PERNELL: Well, I'm not  
5       sure that we're --

6               MR. MILLER: Because there ain't going  
7       to be a boat waiting for you to pick you up  
8       January 1, 2002, and that's our concern.

9               PRESIDING MEMBER LAURIE: I'm not sure  
10      that we're changing all of the captains. I don't  
11      think that the staff proposal is suggesting that  
12      we throw everything out.

13              MR. MILLER: I believe that it is. I  
14      think if you read it carefully --

15              COMMISSIONER PERNELL: Well, then we  
16      have a difference of opinion on it.

17              MR. MILLER: Okay. Maybe that's just  
18      something that needs to be clarified, because  
19      that's my reading of it.

20              MR. MESSENGER: Can I? I would like to  
21      just deal with the program --

22              PRESIDING MEMBER LAURIE: Michael, hold  
23      on a second, because I have an immediate follow-up  
24      question. If I lose it then I will forget it.

25              We're talking about the distinction

1       between regulation and contract. Under a  
2       regulation scenario PUC regulates and how would  
3       that work? Or CEC would be given regulatory  
4       authority --

5               MR. MILLER: No. How would your  
6       recommendation work?

7               PRESIDING MEMBER LAURIE: Yes.

8               MR. MILLER: Our proposal was brief on  
9       this point, but we think the PUC authority would  
10      be limited to putting into force the decision that  
11      were made here at this Commission. And the CEC's  
12      role would be to provide oversight authority, to  
13      make decisions on program oversight and  
14      management.

15              The PUC's role would be to take those  
16      issues in terms of overall funding level, insure  
17      they're accurately collected from rates and put  
18      into the right pots. And that's their role. That  
19      would be their role.

20              PRESIDING MEMBER LAURIE: And who  
21      decides terms and conditions of the management  
22      program? Is that the regulator, the PUC, or the  
23      oversight authority, the CEC?

24              MR. MILLER: The CEC, the oversight  
25      authority.

1                   PRESIDING MEMBER LAURIE: Okay. So the  
2                   CEC, through oversight, develops an outline of  
3                   terms and conditions under which management would  
4                   be conducted. And that becomes a mandate of the  
5                   regulatory authority, the PUC?

6                   MR. MILLER: Yes.

7                   PRESIDING MEMBER LAURIE: Okay. Well,  
8                   if the CEC has a list, and under the regulatory  
9                   scheme then the utilities are subject to the  
10                  regulation. Under a contractual scheme the CEC  
11                  has its terms and conditions, but by golly, you  
12                  negotiate those.

13                  And so I have to remember who it was  
14                  that appointed me to this position because it kind  
15                  of seems like voluntary contractual efforts are  
16                  preferable in many cases to mandated regulation if  
17                  you can accomplish the same purpose.

18                  So I'm confused as to how the regulation  
19                  would work. If we're proposing, under the  
20                  regulatory scheme, terms and conditions for  
21                  management that flows through the PUC and gets  
22                  mandated upon the utilities, how that's much  
23                  different than the CEC developing terms and  
24                  conditions for management, and then sitting down  
25                  at the table with the utilities and actually

1 negotiating those.

2 MR. MILLER: Let me offer you one  
3 particularly significant way in which that's  
4 different.

5 PRESIDING MEMBER LAURIE: Okay.

6 MR. MILLER: If there's a dispute and  
7 the administrator says, well, you know, we think  
8 it's going to cost this much, and you say no, it  
9 shouldn't cost that much, we're not going to give  
10 you that money. And you have a contract. Then  
11 that dispute is resolved in court.

12 PRESIDING MEMBER LAURIE: I don't agree  
13 with that.

14 COMMISSIONER PERNELL: It depends on  
15 what the contract said.

16 PRESIDING MEMBER LAURIE: Not all --

17 MR. MILLER: Mediation?

18 PRESIDING MEMBER LAURIE: Contracts have  
19 all kinds of remedies other than court remedies.  
20 And in this instance it doesn't serve the public  
21 well to take these matters to court. And so you  
22 set up a series of administrative remedies rather  
23 than judicial remedy. I am not concerned about  
24 that one.

25 MR. MILLER: I think perhaps, I mean, my

1 concern is real, I think, in the sense that I  
2 haven't seen here enough to make me feel confident  
3 that that process could occur. And could be  
4 concluded by January 1, 2002.

5 I don't have nearly the expertise that  
6 you or other parties may have on this. And  
7 perhaps what's needed is a much more careful  
8 delineation of how it would occur. Because I'm  
9 looking at a very brief description of the process  
10 and the conclusion that it can occur. And I'm  
11 looking at an experience base that suggests it  
12 can't occur in that timeframe.

13 I don't think that -- we've recommended  
14 that you allocate 21 months to the process. I  
15 don't think that's excessive. I think that's  
16 reasonable and appropriate. I don't think it's  
17 pessimistic, I think it's appropriate.

18 So, I'm not saying it can't occur. The  
19 amount of money doesn't disturb me. It's just, I  
20 think, it's going to take time.

21 If you think it can be done, if the  
22 staff thinks it can be done, then I think it's,  
23 from my perspective, I would certainly appreciate  
24 a stronger case being made for how it can be done.  
25 Because absent that we, you know, we're not going

1 to go on faith.

2 PRESIDING MEMBER LAURIE: Mr. Messenger.

3 MR. MESSENGER: I want to try to respond  
4 to the permanent funding points and then some  
5 miscommunication, I think, about what the staff  
6 proposal was with respect to the utility three  
7 makes.

8 First of all, in terms of program  
9 funding, I think there's just a disagreement about  
10 the level of evidence that's needed to support a  
11 \$20 million increase in funding from 270 to 290.  
12 We think that the reliability problem is likely to  
13 be significant enough that we can propose the  
14 Legislature going from the current authorized  
15 level, which is around 270, up to 290.

16 Peter is saying that because of  
17 political obstacles it may be a more prudent  
18 strategy just to go in and authorize 270 and seek  
19 funding in some other way for that reliability, if  
20 that's what's needed. And that's just a judgment  
21 call. People can disagree about what --

22 MR. MILLER: Can I respond to that?

23 MR. MESSENGER: Sure.

24 MR. MILLER: The problem I'm facing  
25 there is that -- I fully agree and we've sent

1        comments to the Commission saying we agree, this  
2        reliability problem is a substantial problem. \$20  
3        million ain't going to solve it.

4                So, in fact it's not clear to me how  
5        that additional \$20 is going to make a real  
6        contribution. Are we going to buy meters with it,  
7        you know, a couple hundred meters. Or are we  
8        going to use it to advocate for different rate  
9        designs at the PUC. Or are we just going to  
10       supplement the existing programs.

11               And that's the problem I'm facing in  
12       trying to justify that \$20 million. If we're  
13       really going to go after targeted investments and  
14       energy efficiency and capacity constrained areas,  
15       we should ask for more than \$20 million.

16               MR. MESSENGER: The other thing that I  
17       wanted to talk about was, you mentioned in your  
18       comments that you felt that at any time the  
19       Commission could sever its contract with the  
20       utilities based on a hearing or showing of  
21       conflict of interest.

22               MR. MILLER: No. I said could sever the  
23       solicitation process, the bid process, is the way  
24       I read the RFP.

25               MR. MESSENGER: That's not what we



1 intended to communicate. And I could walk you  
2 through the paragraph if you want.

3 Our belief was that the Commission  
4 should allow parties, if they want to, at a  
5 hearing, prior to actually signing these  
6 contracts, to come in and make their case if they  
7 felt that signing these contracts with utilities  
8 would, in fact, be against the public interests.  
9 And that would be their one chance in the sun to  
10 make that case.

11 And then if the Commission was convinced  
12 that the utilities had adequately mitigated any  
13 problems that were, in fact, going to be in the  
14 public interest, they would go ahead, ask for  
15 bids, and sign contracts. And then those  
16 contracts could not be severed during the middle  
17 of the contract term or any other time.

18 And the other thing is I'd suggest if  
19 you look at the actual language it says that after  
20 two years --

21 MR. MILLER: No, and I don't read it to  
22 say that you can sever the contract. It's the bid  
23 process that there's all these clauses that would  
24 allow the Commission to cancel the bid process.

25 MR. SUGAR: I think, Peter, we should

1       have added a phrase in there to indicate that this  
2       process would have to happen very early. That if  
3       there were doubts about the utilities' abilities  
4       to handle these contracts without -- if there were  
5       doubts about their being able to mitigate the  
6       conflicts of interest, those have to come up very  
7       early because the Commission would have to make a  
8       decision very early in the process whether to go  
9       ahead with the process of contracting with the  
10      utilities versus, you know, allowing or requiring  
11      other entities to bid.

12                       So this would have to be happening  
13      pretty early in the next --

14                   MR. MILLER: And what confuses me there  
15      about that specific one is there are already been  
16      a variety of doubts expressed in the staff report  
17      and from other parties about this conflict of  
18      interest.

19                   So, isn't there -- I mean if you're  
20      going to go forward with it, haven't you already  
21      decided that they can?

22                   PRESIDING MEMBER LAURIE: Well, I'd like  
23      to move on. There's a basic policy question.  
24      Staff is proposing that there be an out. And  
25      you've indicated that for stability purpose or

1 otherwise you object to that.

2 MR. MILLER: Yeah.

3 PRESIDING MEMBER LAURIE: So that policy  
4 issue is on the table for consideration.

5 MR. MILLER: Okay.

6 MR. MESSENGER: Just two more points and  
7 then I'll be done.

8 You indicated that you didn't think the  
9 Energy Commission was only signing a contract for  
10 two years with the utilities. On page 57 in the  
11 top paragraph it says, If the utilities have  
12 performed well, we would have the option of  
13 renewing these contracts. Or if it was decided  
14 they had performed poorly, we could put these  
15 contracts out to bid.

16 So, we weren't meaning to foreclose the  
17 option of extending contracts for utilities that  
18 have performed well.

19 And I guess the last thing, and this is  
20 where I think there's a difference between staff's  
21 perspective and a lot of different perspectives is  
22 this question of revolution versus evolution.

23 We think that this is evolutionary  
24 perspective because we're proposing to take people  
25 who have run these programs for 20 years and ask

1       them to do two things differently.

2               One, go from a service territory base to  
3       a statewide base. Some people think that's really  
4       difficult, some people think it's really hard and  
5       there's reasonable room for disagreement about  
6       that.

7               And the second one is, and this one I  
8       think is more fundamental because of uncertainties  
9       that Peter's mentioned, going from a regulatory  
10      based system to a contract based system. And how  
11      much of a change that would impose on utilities  
12      who are used to a regulatory base, and moving to a  
13      contract base, how difficult that would be. I  
14      think reasonable parties can also disagree about  
15      the severity of that problem..

16              The advantage that staff was trying to  
17      keep in this proposal is that we believe that  
18      utilities have core competencies and could  
19      transfer those competencies from working at the  
20      service territory level to the statewide level  
21      better than some new firm that we just hired out  
22      of the blue to do that. Other people may disagree  
23      with that. But that's where, I think, we're  
24      coming from.

25              Whether or not it's realistic, or

1       whether even utilities would be interested in  
2       writing programs statewide is something that we  
3       have to discover in some kind of bid process or  
4       solicitation process, because frankly we're hoping  
5       to get some response from the utilities about  
6       whether this would be something they'd be  
7       interested in, or whether they just, on principle,  
8       not do the statewide program because it's against  
9       the goals and objectives of their company.

10               So that's really, I think, all I wanted  
11       to do in terms of responding to the various  
12       questions that Peter raised.

13               PRESIDING MEMBER LAURIE:   Mr. Abelson.

14               MR. ABELSON:   Actually I think Mr.  
15       Messenger in his last set of comments captured the  
16       main point that I was going to offer which is that  
17       I think that there are really two core differences  
18       aside from two areas that the utilities are  
19       excluded from, so that's certainly a difference.

20               There is this question of having  
21       everyone once again come to the table on whether  
22       the burden is met or not that for another two  
23       years the utilities should be allowed to proceed.

24               You operate from an assumption that they  
25       should.   We've had testimony here from parties who

1 would not let them compete at all. So the issue  
2 is joined. We are starting with the presumption  
3 that they are qualified in these three areas, but  
4 we are willing to at least have the issue debated  
5 again.

6 The one other difference which Mike did  
7 pick up and I think is important is that as the  
8 draft currently has it, it would be for statewide  
9 programs. And that's new. And perhaps that's an  
10 issue that's a problem or concern, but I think we  
11 should certainly be honest that it is a  
12 difference, evolution, from what is currently  
13 going on.

14 PRESIDING MEMBER LAURIE: Thank you.  
15 Anybody else have -- Mr. Sugar.

16 MR. SUGAR: I have just a couple of  
17 comments. Peter and I spoke a little bit over  
18 lunch discussing some of the issues regarding the  
19 amount of time and the resources that we estimate  
20 would be required to get this program operating.

21 And I think that our differences come  
22 down to different assumptions about the difficulty  
23 of obtaining qualified staff. Peter's been  
24 involved with the CBEE's request for proposal  
25 process which the Public Utility Commission

1       generally oversaw.

2               I think we differ in our assumptions on  
3       how applicable that experience is to an RFP  
4       process operated, you know, by the Energy  
5       Commission.

6               And I think we also have different  
7       backgrounds or understanding of the difficulties  
8       in trying to coordinate between two regulatory  
9       agencies, which would be required by NRDC's  
10      proposal. Is that a fair kind of description?

11              So I don't want to get into, you know,  
12      Peter and I get into he said yes, we can do it; he  
13      said no, we can't do it. But I think that that's  
14      where the differences seem to boil down to largely  
15      in there.

16              So that as you consider the various  
17      positions that gives a little bit better idea of  
18      where the differences lie.

19              MS. TEN HOPE: We've had a lot of  
20      discussion about the regulatory model. You have  
21      trouble conceptualizing how this contract model  
22      would work. I still cannot see how the regulatory  
23      model would work, what the roles and  
24      responsibilities of the Energy Commission would  
25      be. What the roles and responsibilities of the

1 PUC would be. What that relationship would be  
2 like between the utility and each of those  
3 agencies and the two Commissions together.

4 So, not necessarily right now, but  
5 that's still very unclear how that would flow and  
6 where decisions would be made.

7 And I just wanted to ask one other  
8 thing. You talked about how the staff report  
9 doesn't put any boundaries around reliability,  
10 what those programs would look like, what kinds of  
11 programs should be funded. I think  
12 recommendations in that area would be really  
13 helpful.

14 And you also pointed out that it's a  
15 huge potential problem, and this program may not  
16 be able to address -- this amount of money won't  
17 be able to address that problem in the short term.  
18 What does that mean? Does that mean the  
19 reliability problem is a short-term problem over  
20 the next four years, and energy efficiency really  
21 doesn't play a role there, this is not a PGC-  
22 funded program? It ought to be a regulatory  
23 option under the PUC or the ISO through rates or  
24 meters or some other kind of thing?

25 I would like some feedback about where



1       that type of problem should be solved, and if it  
2       should be solved through PGC funds if there should  
3       be any boundaries around it.

4               PRESIDING MEMBER LAURIE:   Thank you, Mr.  
5       Miller.

6               MR. MILLER:   Thank you.

7               PRESIDING MEMBER LAURIE:   We do have to  
8       move on.   I think we have the room only until  
9       4:00.   So, we have to hustle.

10              Ms. Norton, the City of San Jose.  
11       Welcome, ma'am.

12              MS. NORTON:   Good afternoon.   Thank you  
13       for giving us the opportunity to make some  
14       comments.   My name is Rita Norton.   I am the  
15       Environmental Program Manager for the City of San  
16       Jose, and I've been with the City of San Jose  
17       since 1981 operating a number of different  
18       resource management programs.   And energy  
19       efficiency has always been a core part of the work  
20       that I have done for the City of San Jose, but I  
21       have had opportunities to work on other resource  
22       management programs in water and solid waste.

23              And Stan Lieberman will -- oh, you did,  
24       okay.   I'm going to make some general comments and  
25       just briefly refer to the written comments,

1       because this is definitely a work in progress.

2               Why the City of San Jose is here is  
3       we've followed very closely energy efficiency.  
4       We're one of the cities in the state that have  
5       been recognized as a leader in energy conservation  
6       and energy management. And we are also a very  
7       large energy consumer.

8               We also have had my presentation on the  
9       technical advisory committee to the California  
10      Board of Energy Efficiency, so I've had a chance  
11      very closely to participate and observe what's  
12      happened over the last four years under AG-1890.

13              So, with that as a little bit of  
14      introduction as to who I am and why I'm here  
15      representing the City of San Jose, I'd like to  
16      just briefly mention that over the last three  
17      years we've seen a combination of delays with the  
18      glimmer of opportunity, but primarily delays.

19              And I would say the last few years have  
20      moved at a glacial pace. And so I hope that we  
21      move faster in the near future. And that if we  
22      speak evolutionary I hope it's a fast evolution.  
23      Because I certainly hope it's not any slower than  
24      the pace that we've just had to experience over  
25      the last four years.

1                   From my perspective, working for local  
2                   government, and our legislative representative,  
3                   and the kinds of legislation that we support out  
4                   of our city council and our mayor, with our  
5                   delegation that represents Silicon Valley and  
6                   Santa Clara County up here in the Legislature, I  
7                   think one of the key things that are coming up is  
8                   very very broad support for continuing public  
9                   goods funding.

10                  And I don't think I've heard enough  
11                  discussion on that issue here. I would not take  
12                  it as a slam-dunk that we're going to get the  
13                  Legislature to continue supporting public good  
14                  funding unless we show a very good case for why  
15                  cross-sectors want to see this to be done.

16                  I would very much hope that the energy  
17                  efficiency community hangs together on this issue,  
18                  and that we're seen to be a group of committed  
19                  proponents for the benefits of energy efficiency  
20                  that are well articulated in the report, and that  
21                  each of us is advocates that believe in it. And  
22                  that we don't repeat what's happened over the last  
23                  few years, of going back into our kind of partisan  
24                  positions about how energy efficiency programs  
25                  could be run.

1                   I don't take it then as being that easy  
2           to get the legislative support to continue the  
3           public good funding. And our major commitment  
4           that comes through in the report is to make sure  
5           we figure out how to get that commitment.

6                   We need full justification to continue  
7           the support for public good funding. And we need  
8           to expand the support outside of the community of  
9           the energy efficiency advocates who are in this  
10          room today to include other advocates who are  
11          looking for sustainable future, however they  
12          choose to define that. We need to make a very  
13          good case of explaining that.

14                  With that, I would like to commend the  
15          CEC Staff for the report. My review of the  
16          report, as well as the written comments that we've  
17          shared with you today, are primarily looking at  
18          points where we agree. We have not gone through  
19          this report line by line to find out and to  
20          identify areas where we have major concerns. And  
21          my being here today is basically an educational  
22          opportunity for us to hear the conversations. So  
23          I did not write those down. I need to become more  
24          educated on where are the weaknesses in the plan.

25                  The written comments that I provided

1       primarily comment on where I have observed  
2       agreement. The lack of debate there is not to say  
3       there is no debate. I just don't know enough  
4       about it just yet. I need to understand those  
5       better.

6               One other comment, though, is that given  
7       what has happened at the CPUC, is that I think we  
8       need, at least at this point, to have a  
9       contingency plan laid out so that if there are  
10      major problems moving ahead in the administrative  
11      and operation plan that there is at least a second  
12      alternative. And I don't know how to frame that  
13      at this point. Whether it should be in the staff  
14      report.

15             I would suggest probably when you go to  
16      legislation you don't want two options. But maybe  
17      we're early enough right now to have two primary  
18      alternatives, as opposed to just one. And with  
19      that I would put more credit on the nonprofit  
20      alternative. I wouldn't discount it to the degree  
21      it is. I think we very much simply have to have  
22      at least two options at this point.

23             So I would at least tentative support  
24      what is being stated in the report as well as the  
25      nonprofit option to be fleshed out more.

1           My next major point is the role of local  
2           government and the parallels with muni's. I was  
3           very interested at the beginning of this morning  
4           the conversation by the Commissioners about how  
5           did the muni's fit into this.

6           And, you know, why do we look so much at  
7           the muni's. I think we do, a) they've been a good  
8           incubator for change and innovation. We see some  
9           very successful cases coming out of them. That's  
10          why we're interested in the muni's. And we look  
11          at them, as well, from my perspective because they  
12          do have local control and they're able to take  
13          advantage of local leadership.

14          And with that in mind, most of the  
15          comments that you'll read that I've written are  
16          where we continue to not take advantage of local  
17          leadership in making energy efficiency an  
18          important practice.

19          And I was very interested in reading the  
20          comments of the CEC Staff draft report on  
21          describing market transformation in terms of this  
22          more basically paradigm shift about the resource,  
23          as opposed to just incentivizing for very short  
24          term, marketing the product.

25          And I think through what we've seen in

1       some of the muni communities is that leadership  
2       expressing itself, a local commitment to those  
3       programs, and I, you know, people say, well, what  
4       am I here to talk about. The bottomline is really  
5       about how we get that kind of leadership out of  
6       the communities that have been historically served  
7       by IOUs. That is untapped leadership for energy  
8       efficiency.

9               My next major observation is that in  
10       your Energy Commission place in the state agency,  
11       you're part of a resource agency and I continue to  
12       look to the state in terms of your role as being  
13       part of the resource agency, for you to work more  
14       in synergy with water efficiency and solid waste.

15              We continue to just market energy  
16       efficiency without the other linkages to resource  
17       efficiency, which is what we do day to day in a  
18       local government office. I mean customers  
19       basically do look at these packages together and  
20       we continue to not make those linkages in the way  
21       we roll out these programs.

22              My next observation is that the utility  
23       role is very important. When we talked with our  
24       customers about energy efficiency, they look at  
25       the utility with great respect. And we need to

1 keep them as part of the picture.

2 So I am making the observation as I'm  
3 listening here today, that having the utilities  
4 there as administrating two of the five portfolios  
5 seems to make a lot of sense. That does sound  
6 like an evolutionary plan to me.

7 In terms of contracting, the most  
8 important thing I have to say is efficiency. We  
9 just don't see contracts getting out. I don't  
10 care how we do it. I mean if the energy  
11 efficiency doesn't do it any better than how it's  
12 happening, as I am experiencing it, something just  
13 isn't working.

14 So I'm not going to support an energy  
15 efficiency model if it takes months and months to  
16 do. We have to figure out how to get those  
17 contracts through. We need boilerplate language.  
18 We have to figure out who we're going to contract  
19 with. And get the attorneys working on the  
20 contracts up front. These are the parties who we  
21 expect to contract with, this is the kind of  
22 contract language that is appropriate up front.  
23 Find out what works, write boilerplate, those  
24 things can happen.

25 But if we use old boilerplate as if, you



1 know, this entity, we've never heard of this  
2 entity before, the attorneys have to work it all  
3 through as if it never happened before. These  
4 things can move quickly if we anticipate the kinds  
5 of parties who we legally are going to be  
6 contracting with.

7 As I mentioned I see this very much as a  
8 work in progress, so the written comments again  
9 that I've given to you really are where we are at  
10 this point. These hearings are very helpful for  
11 us to get up to speed on it.

12 In terms of the comments that I have  
13 written, the first few pages outline my analysis,  
14 the continuing need for why the public part of it  
15 need to stay in place. And we list six reasons  
16 there. I think they're pretty much the same  
17 reasons that you're hearing from other parties.  
18 But I'm going to be sharing this copy with my  
19 senior management, our city manager, and so forth.  
20 So I think you can look at these as being reasons  
21 that maybe speak outside of the just energy  
22 efficiency community, to whom I think we really  
23 have to talk to.

24 But I list in here the sixth as being  
25 investing in municipal operations. You know, we

1 still have opportunities in the public sector,  
2 buildings to do more energy efficiency, and we'll  
3 need public goods funds to help provide incentive  
4 for those investments.

5 I have used a few quotes in this report,  
6 from the draft report that I thought really spoke  
7 to issues, and I won't repeat those, but I ask for  
8 you to look for those two quotes in here.

9 Our recommendations, as well, include  
10 institutionalizing local government on the various  
11 committees and steering committees, et cetera. We  
12 want to be able to participate more than coming to  
13 hearings.

14 And so as you set up advisory committees  
15 and so forth, to institutionalize the role of  
16 local governments who want to play major roles in  
17 energy efficiency, and some of the discussions  
18 that happened at CBEE was, well, if we do it for  
19 one, we have to do it for all. That's not the  
20 case.

21 There is a small group of activists,  
22 environmentally oriented local governments. They  
23 can set the pace for market change. I don't think  
24 you're going to be overwhelmed by local  
25 governments asking where's my piece. And if they

1 do, so much the better. If they want to really  
2 push energy efficiency it makes the job easier for  
3 the rest of us.

4 I list in this report a table that we've  
5 been showing for the last two years. It shows  
6 that out of our City of San Jose, our ratepayers  
7 spent \$20 million a year in public goods funds.  
8 And that goes towards energy efficiency,  
9 renewables, low income program, you know, the PIER  
10 programs and so forth.

11 And part of making the case here will be  
12 what do we get for our \$20 million. And we're  
13 here to help make it worthwhile. But there is an  
14 issue of geographical pay and benefit that I think  
15 comes into it that has to be looked, as well as  
16 the sectoral approach of residential, small  
17 commercial, large commercial way to look at who's  
18 benefitting from the public goods funds.

19 We speak briefly about local versus  
20 regional approaches. We don't see any competition  
21 between the regional energy offices and the local  
22 government energy offices. We'll work out our  
23 relationships in terms of our strengths and  
24 skills. In our case we would be working with  
25 ABAG. So people who throw out kind of a stalking

1       horse on well, we must have regional energy  
2       offices, and then they can distribute money to  
3       local energy offices, that just doesn't fly.  
4       Where there are strong local energy offices they  
5       can work collaboratively with regional energy  
6       offices.

7                       With that, I think I'm pretty much at  
8       the end of my comments. The very last piece that  
9       I talk in here comes back to the issues like green  
10      buildings. A green building, you know, that is  
11      the kind of conference de jour in terms of  
12      environmental management.

13                     And a green building embodies, you know,  
14      use of recycled materials, use of recycled water,  
15      and very energy efficient. So that's what we're  
16      getting out of the grassroots, a need for green  
17      buildings.

18                     So what I would like to just close with,  
19      how does the resource agency here, which you're  
20      the CEC, how do you work with -- you know, we're  
21      in the water resources board building, and we have  
22      down the street, you know, integrated waste  
23      management board with RFPs right now for how to  
24      utilize recycled material in building.

25                     I'd very much like to see some cross-

1       agency planning on this, that will be a very good  
2       supported program. You'll get lots of  
3       legislative, you'll get lots of local government  
4       support in seeing that.

5               So, I'd be happy to respond to any  
6       questions. And I really want to thank you very  
7       much for having us here today.

8               PRESIDING MEMBER LAURIE: Thank you, Ms.  
9       Norton.

10              COMMISSIONER PERNELL: I just have one  
11       comment. I agree with you wholeheartedly about we  
12       need to be talking about the need, rather than  
13       debating who gets what piece of the pie. We got  
14       to make sure that we get the pie.

15              MS. NORTON: We'd better work on it.  
16       This is not a time for the energy efficiency  
17       community to --

18              COMMISSIONER PERNELL: So that's a point  
19       well taken.

20              MS. NORTON: -- go separately. Thank  
21       you.

22              MS. TEN HOPE: Can I ask one question?

23              MS. NORTON: Sure.

24              PRESIDING MEMBER LAURIE: Go ahead, keep  
25       in mind the time, Laurie, but please go ahead.

1                   MS. TEN HOPE: You talked about needing  
2                   or wanting a strong role for local government. Do  
3                   you tie that back to any administrative structure,  
4                   or requirements of an administrative structure  
5                   that facilitate that? Or is it indifferent to the  
6                   administrative structure?

7                   MS. NORTON: I'd like more time to think  
8                   about that. You know, local governments don't  
9                   want to take on the full administrative structure,  
10                  but we want opportunities to run effective  
11                  programs. And you know, maybe -- we need more  
12                  discussion on that.

13                  PRESIDING MEMBER LAURIE: Mr. Sugar.

14                  MR. SUGAR: Just a quick question. You  
15                  expressed frustration with the difficulty in  
16                  meeting contracts through the mail. Which  
17                  contracts are these? Are they under the current  
18                  energy efficiency program?

19                  MS. NORTON: Yes.

20                  MR. SUGAR: Okay.

21                  MS. NORTON: I mean we're very happy  
22                  that we have negotiations underway. I mean we are  
23                  very happy we have negotiations underway. But we  
24                  don't have contracts yet.

25                  MR. SUGAR: Thank you.

1 MS. NORTON: Thank you.

2 PRESIDING MEMBER LAURIE: Thank you, Ms.  
3 Norton. Mr. Schiller. Ms. Norton, as part of the  
4 education process, probably the whole world  
5 believes that the Energy Commission is a part of  
6 the resources agency except the Energy Commission.  
7 So that's just something to keep in mind.

8 Mr. Schiller.

9 MR. SCHILLER: Thank you. Good  
10 afternoon. My name is Steve Schiller. I'm with  
11 the firm Schiller Associates. We're a consulting  
12 firm that's headquartered here in California.

13 Relevant to today's topic we're involved  
14 in design administration, implementation of market  
15 transformation and resource acquisition programs  
16 in various states, California, Texas, Colorado,  
17 Wisconsin, New York and others.

18 The question, I think, was asked  
19 earlier, we're one of the prospective bidders for  
20 the independent administrator. We actually are an  
21 independent administrator on programs in  
22 Wisconsin.

23 I'm hoping, to a couple of points that  
24 Rita had made, that our comments come across as  
25 constructive criticism. I think it's also very

1       important that we have the programs and the  
2       support that we get something passed by  
3       Legislature.

4               I certainly appreciate the efforts that  
5       have been taken by the staff. They've done this  
6       report in a very short period of time. I think  
7       John's group should clearly be commended for an  
8       excellent job of pulling this together in the  
9       short period of time.

10              I think in general we support the new  
11       administrative structure that's been defined. In  
12       particular some of the principles that are stated  
13       in section Roman numeral IA6.

14              However, -- and here come the however --  
15       we do have some significant concerns about the  
16       report. And those primarily reflect around the  
17       lack of quantifiable energy savings goals and the  
18       proposed transition strategy to the new  
19       administrative structure. In that context I think  
20       a number of our comments follow on the ones that  
21       Peter Miller made.

22              The principal concerns are five. One is  
23       that there seems to be a complete acceptance of  
24       the PUC's market transformation objectives really  
25       as the sole basis for public goods charge funding.



1                   Secondly, there seems to be a rejection  
2                   of what I consider to be the true objective energy  
3                   efficiency funding through a rejection of the  
4                   concept of resource acquisition.

5                   The third point is that I saw is the  
6                   only quantifiable goal that was in the report for  
7                   \$294 million of public money was the issue about  
8                   the number of businesses and educated customers.  
9                   I think a point that Dick Ely had made very well  
10                  about, you know, the comparison there.

11                  I think, in somewhat a response I  
12                  questioned that Mike had had about what should we  
13                  do, I think there is a quantifiable goal. It's  
14                  related to energy savings. That's what we're  
15                  supposed to be doing here.

16                  I was warmed, if that's the right word,  
17                  cheered that some of the comments that come from  
18                  Peter Miller's discussion that there might have  
19                  been some misinterpretation. But I must say that  
20                  in my reading, and the staff at my company that I  
21                  assigned to read this, we came along with the same  
22                  interpretations that Peter did about, you know,  
23                  where the orientation was for the programs.

24                  I think the fourth concern also, as was  
25                  related before, about the reliability funding put

1       into the PGC funds, I think that's a very laudable  
2       goal; however, I just don't think it belongs  
3       within the energy efficiency. I have an example  
4       in Texas where the inclusion of that issue into  
5       the energy efficiency funding led to things such  
6       as load shedding programs and distributed  
7       generation, which really have nothing to do with  
8       energy efficiency. It's a great idea, public  
9       education is a great idea, you know, free speech  
10      is a great idea. I just don't think it  
11      necessarily belongs in a public good charge  
12      programs right now.

13               And the fifth point relates to the  
14      transition schedule and the mechanisms. Whereas I  
15      do like where you're going with the CEC being the  
16      body in charge. I think that's the appropriate  
17      thing to do. I think you're the right body to do  
18      that.

19               I'm very concerned about the transition  
20      schedule and the resources that you have for doing  
21      that in the timeframe and the manner that you've  
22      done. I'm also somewhat concerned about, you  
23      know, what the utilities' response will be. I'm  
24      not sure if any of them will be speaking today,  
25      about the idea of one of them taking on the state.

1                   I know time's short and so I'm trying to  
2                   talk very quickly. I want to hit a couple of the  
3                   points and follow up on my points.

4                   In terms of the resource acquisition, I  
5                   think that that is the goal. Our goal is to  
6                   increase the utilization of energy efficiency in  
7                   the state. To use energy more efficiently.

8                   On page 18 of the report it states that  
9                   resource acquisition is no longer relevant in a  
10                  restructured electricity market. And I frankly  
11                  disagree with that.

12                  I think that increasing incenting the  
13                  efficient use of electricity is even more  
14                  relevant. It doesn't really matter who's selling  
15                  any of the electricity, or who's selling the  
16                  natural gas, we're still going to have power  
17                  plants. We're still going to have hydro plants.  
18                  I think that looking at resource acquisition is  
19                  still a very valid point.

20                  And from my reading of the report I see  
21                  that market transformation funding dominates the  
22                  report. I saw approximately 87 percent of the  
23                  funding going to market transformation activities.  
24                  It's not a balanced report. It's not a balanced  
25                  way of doing things.

1 I think we have people who feel that  
2 market transformation is the sole thing to do.  
3 And people who feel that rebates is the sole thing  
4 to do. Clearly there's a place for middle ground,  
5 but I don't think the report, as written,  
6 indicates that at all.

7 In Texas the way it's written up, in  
8 sort of a little quick story aside, several years  
9 ago the chair of the Texas Utilities Commission  
10 said they want to use California's model. You  
11 know, for any self-respecting Texan that's quite a  
12 statement.

13 I think now though we see that in  
14 places, when I go to other states, one of the  
15 first comments that comes out is we want to avoid  
16 what California's done. I think we'd all like to  
17 turn that around in the perception.

18 I think part of doing that is to make  
19 sure we have our goals set; that we have some  
20 measurable goals. The ones that are stated in the  
21 report on page 9 I consider to be quite soft. And  
22 I won't necessary repeat that, but there's things  
23 such as goals of having pilot programs or market-  
24 focused portfolios.

25 Our goal is to save energy. I think if

1 we go to the public, we go to Legislature, we need  
2 to say your \$294, we can show you what's provided  
3 for that. It's environmental improvement, it's  
4 less energy use in the state. I think those clear  
5 goals needs to be done.

6 There's mechanisms for getting there. I  
7 think some of those were referred to. Section IB  
8 of the report, I think, starts that process. It  
9 needs to be continued.

10 The market transformation issue, it's  
11 one arsenal in the tools. It's a good thing to  
12 do, but I think in terms of, you know, do we have  
13 a proven way of doing this, I think the report,  
14 you know, does selective cites to that of  
15 different other -- different sources as to how  
16 well that will work. I think we need a  
17 quantifiable tool that in conjunction with market  
18 transformation works.

19 I think the existing private business  
20 and delivery systems for energy efficiency have  
21 been producing results. And I think understanding  
22 and facilitating that process is one of the best  
23 things the Commission can do with the PGC funds.

24 Within the report I saw a number of  
25 places where I frankly was trying to think of

1 another word besides sniping, but I think it's  
2 clearly there. Sniping at resource acquisition  
3 and very much so sniping at the standard  
4 performance contracting programs.

5 On one page there's a citing that it  
6 takes ten years to show results on market  
7 transformation. On the next page there's a citing  
8 from a report that looked at the first six, nine  
9 months of the results and said, clearly, this is  
10 not a good program. It seems to be used as an  
11 example of funding gone wrong.

12 There's clearly things to be modified  
13 with those programs. When push comes to shove,  
14 when it's time to show results to the public for  
15 their money, programs like that I think are our  
16 best shot at it.

17 In terms of the smooth transition, I  
18 concur that your role should be to administer the  
19 moving of funds. I think that, you know, you can  
20 do that. But I think there's a number of things  
21 that need to be addressed in the way the Energy  
22 Commission has done things in the past.

23 I was very happy to see the  
24 administrative flexibility section in the report.  
25 Section II, there. And I really encourage you to

1 look very strongly at that, and finding mechanisms  
2 to make that work.

3 However, --

4 MS. TEN HOPE: Where are you? What  
5 section do you like that you're talking about,  
6 administrative --

7 MR. SCHILLER: I really like this  
8 section.

9 (Laughter.)

10 MS. TEN HOPE: Okay. I thought --

11 MR. SCHILLER: It was great. It's the  
12 section, it's administrative flexibility. It's in  
13 section Roman numeral II, I don't know the exact  
14 page number of it. I just said, boy, that told me  
15 some folks have been listening and that there's an  
16 interest in making some improvements in there.

17 I think you're going to need to work at  
18 that. And with respect to that, I think that some  
19 of the assumptions, as I think a number of you  
20 talked about with Peter about, you know, what's  
21 the timeframe, what kind of resources are  
22 required. You know, going out and doing that in  
23 the manner indicated.

24 I think it's going to take longer, I  
25 think it's going to be a little difficult to

1       get -- more difficult to get those resources than  
2       you indicated. And I was going to try not to pick  
3       on you on this, but back in '97 when the board --  
4       well, I'm going to do it anyway -- back when the  
5       PUC was looking at how long it would take to, you  
6       know, get the new administrator in process, the  
7       Energy Commission came forward in their comments  
8       to the Commission.

9               The Utilities Commission said no  
10       problem, here it is March. You can get an  
11       administrator up and running by the end of the  
12       year and have a new administrator January 1, 1998.

13              A number of us were concerned about  
14       that. But that was the approach. And I hope that  
15       we've learned some lessons there.

16              The last thing about the transition is  
17       that I'm concerned that a process of having the  
18       utilities compete for certain market segments  
19       statewide, this has clearly, in my mind, not been  
20       resolved and I see some difficulties.

21              And our main concern with in the private  
22       industry is that there is some sort of hiatus or  
23       confusion. And I ask you to do whatever you can  
24       to avoid that.

25              So, in conclusion I think the transition



1 will work. I think you need to put some more time  
2 into the one you have here. I think clearly you  
3 need to have quantifiable energy saving goals that  
4 you can go to the public and Legislature with.  
5 And I think you need a balance in programs.

6 You know, 87 percent of the money to  
7 market transformation is way too far on one side.  
8 I think you need to have resource acquisition and  
9 think it's still valuable.

10 Thank you.

11 PRESIDING MEMBER LAURIE: Thank you, Mr.  
12 Schiller, very much. Questions? Comments?

13 Thank you, sir.

14 MR. SCHILLER: Thank you.

15 PRESIDING MEMBER LAURIE: Mr. Chouteau.  
16 I understand we can stay beyond 4:00 for a brief  
17 time. It's my understanding that we were  
18 scheduled to only stay until 4:00. So if some of  
19 you have made airline reservations, depending upon  
20 that, and you have to leave, we will accommodate  
21 you. Just let us know.

22 Mr. Chouteau, good afternoon.

23 MR. CHOUTEAU: Good afternoon,  
24 Commissioner Laurie, Commissioner Pernell, members  
25 of the staff and other stakeholders.

1                   This is not an easy set of comments to  
2                   give because I have two experiences here. And one  
3                   is the experience of this process, which I want to  
4                   say there's been nothing in this process that has  
5                   encouraged me to continue my retirement. That  
6                   everything that I've seen done here and that I've  
7                   experienced has been, for me, positive and  
8                   encouraging. From the professionalism of the  
9                   staff, the respect shown by the parties for each  
10                  other, the open process, the design of the  
11                  process.

12                 So from my point of view, I didn't  
13                 imagine in my wildest dreams that this would go as  
14                 smoothly as it has in terms of process.

15                 I also want to say that in reading the  
16                 report it's very clear to me that staff has put a  
17                 lot of thought into this. They have listened to  
18                 the parties. They have enumerated the issues, and  
19                 they have attempted to address them. You know, I  
20                 don't see any arbitrary recommendations. I don't  
21                 see any preconceived notions that the staff has  
22                 sort of introduced the beginning and then stayed  
23                 stuck to.

24                 And on the other hand I don't agree with  
25                 most of what I read in the report. So, you know,

1       what am I to say, you know?

2                   (Laughter.)

3                   MR. CHOUTEAU:  We will have written  
4       comments because there is a lot of material here.  
5       And you've heard a lot of comments today, and I'm,  
6       you know, I'm not going to try to enumerate, you  
7       know, our version of each of the individual  
8       points, many of which have been made already by  
9       the parties.

10                  PRESIDING MEMBER LAURIE:  Chris, can I  
11       stop you right there?

12                  MR. CHOUTEAU:  Yes.

13                  PRESIDING MEMBER LAURIE:  You mentioned  
14       written comments.  At this time do we have a sense  
15       of what our time deadlines will be for that?

16                  MR. SUGAR:  The only sort of self-  
17       imposed deadline was TURN explained that they  
18       couldn't be here and said that they could have  
19       comments by Friday, so we have kind of set a  
20       precedent that at least Friday.

21                  PRESIDING MEMBER LAURIE:  And I think  
22       realistically, Chris, that's going to be pretty  
23       close to it.  Because the Committee has to move  
24       forward in its review, and the document has to get  
25       written.

1 MR. CHOUTEAU: Okay, will do.

2 But let me try to summarize, you know,  
3 my thoughts about the report as simply as I can.  
4 And there are basically three issues that I have.  
5 Integration, efficacy and continuity.

6 And, you know, if anything in this  
7 process, if anything comes close to a consensus or  
8 certainly a vast majority of opinion, it would be  
9 the need for smooth transition, for avoiding a  
10 hiatus in programs, avoiding disruption. I'll  
11 call that continuity.

12 And, you know, part of the emphasis and  
13 part of the consensus was there before. We went  
14 through the process in the last four years at the  
15 Commission. But I think it's stronger now, having  
16 gone through that process.

17 And my concern with the report is that  
18 although I think it's well intentioned, from my  
19 point of view, from a person, you know, running  
20 programs, responsible for delivery of programs,  
21 that what the report in effect recommends is  
22 taking everything we're doing now and how we're  
23 doing it, and turning it on its head in two years.

24 And that's exactly what the CPUC  
25 proposed to do. And that's exactly what led to

1       some of the pain and some of the difficulties  
2       that, you know, we have surmounted in the last  
3       several years, working with the Commission and the  
4       board and other stakeholders.

5               And, you know, I think the staff's  
6       intent, as I read the report, was to provide  
7       continuity, you know, was to have the utilities  
8       continue in some role. However, the  
9       recommendations, as I read them, would create  
10      incredible uncertainty in the marketplace right  
11      now. Just the issuance of this report, itself,  
12      would create uncertainty in the marketplace as to  
13      who would be administering these programs, and  
14      under what kind of structure, what kind of  
15      contractual agreement.

16             So when I think of continuity what I  
17      think of is, is what we have basically working.  
18      Or is it, you know, or is it a disaster. And I  
19      bought a car recently, which for me is a big  
20      thing. I bought a 1990 Miata, made by Mazda, I  
21      guess. I didn't have to go to a showroom, so I'm  
22      going to guess it's Mazda.

23             So what I noticed is that the car's ten  
24      years old, but it doesn't look that different from  
25      the cars that they're selling today. It is

1 different, because I've sat in a newer car and the  
2 lights don't flash up and other things don't  
3 happen, and there's a place to put your coffee.  
4 But, you know, you get back 20, 30 yards from the  
5 car, and basically, you know, it's the same car.

6 And the question is, you know, are the  
7 programs such a failure that you want to send all  
8 your engineers back to the auto drawing boards and  
9 say, you know, I'm not talking about changing the  
10 color; I'm not talking about, you know, modifying  
11 the wheelbase slightly. I'm talking about  
12 completely redesigning the car.

13 Because that's how I read this report.  
14 And I know it's not -- I mean I really believe  
15 it's not intended to be that way. But from a  
16 practical standpoint when I think about what's  
17 going to happen as a result of implementing the  
18 structure that's recommended, it will, in fact, be  
19 completely recreating. Who delivers the programs,  
20 how they're governed, how the programs are  
21 delivered, and how the people who deliver the  
22 programs are chosen.

23 And I think two years is going to be a  
24 real problem to do that.

25 PRESIDING MEMBER LAURIE: Well, you've

1       just hit the nail on the head, sir, because last  
2       weekend we went out and bought a new Miata.

3                       (Laughter.)

4                       PRESIDING MEMBER LAURIE:   Thank you.  
5       Questions?   Oh, I'm sorry.

6                       MR. CHOUTEAU:   That's okay.   But I will  
7       make it quick.

8                       PRESIDING MEMBER LAURIE:   No, no, no,  
9       that's okay.   I didn't mean to interrupt.

10                      MR. CHOUTEAU:   That was integration.

11                      Efficacy.   Everybody I think in this  
12       process wants this to work.   People have different  
13       ideas about how to make it work.   I think it's  
14       very reasonable to experiment in terms of how to  
15       make it work.

16                      Again, relating back to my last point on  
17       continuity, that if you're going to do that, I  
18       suggest you do it incrementally.   And, you know,  
19       we --

20                      PRESIDING MEMBER LAURIE:   I'm sorry, you  
21       suggest what?

22                      MR. CHOUTEAU:   That you do it  
23       incrementally.   And the proposed administrative  
24       structure, I believe, introduces several new  
25       issues and obstacles to the effective delivery of

1 the programs.

2 I don't think it intends to but here's  
3 how I read it. Thirty positions at the  
4 Commission, full time, thinking about what  
5 administrators ought to be doing. Thinking about  
6 it in advance, i.e., putting the other strategic  
7 plan, thinking about it looking in reverse, how  
8 did they do last time. And in between thinking  
9 about what are they doing today, what did they do  
10 last week, how are they doing this quarter.

11 It's a significant professional  
12 commitment 30 staff. It is going to be an  
13 independent body of thought that this Commission  
14 is going to have to deal with and listen to, as  
15 the administrators will.

16 You will still have administrators who  
17 will have their own professional staff, their own  
18 body of thought, their own corporate culture,  
19 their own philosophy on how to approach the  
20 programs.

21 In addition, this report anticipates  
22 moving the program managers out of administration  
23 and into implementing; therefore, the  
24 administrators will not longer be an integrated  
25 body of strategic planners, evaluators,



1 administrators, and program managers, but now will  
2 have to essentially send the work offshore to  
3 program managers who are working for implementers.

4 That creates a third level of  
5 administration, a third level of professional,  
6 interested, involved partners in this program,  
7 another body that will have its own opinions.  
8 Each of these bodies, the Commission, itself, the  
9 administrator, and the implementers, with the  
10 program managers managing programs, will be linked  
11 in the staff's model contractually.

12 The number of links in the system is  
13 greatly increased, and therefore the opportunity  
14 for misunderstanding, misconnection, misdirection,  
15 sometimes perverse incentives.

16 The last thing I want to comment on is  
17 integration, because I think we've also heard  
18 today in many forms, people express the value of  
19 integration in these programs. Integration  
20 happens in many different ways. It happens across  
21 program sectors, it happens when information  
22 programs support rebate programs or support market  
23 transformation programs. It happens when  
24 residential programs and nonresidential programs  
25 both use the same brand or support each other in

1       using and sharing technologies, sharing  
2       information from research and development or  
3       emerging technologies, in sharing delivery  
4       channels.

5               It happens when the current  
6       administrators work together on a statewide  
7       program. My fear is that the staff report, as  
8       laid out, acts to actually dis-integrate some of  
9       the integration that's already there.

10              They're taking what now is packaged  
11       within each service territory we have integrated  
12       programs across res, nonres, and new construction.  
13       They would now segregate those so you'd have  
14       separate administrators running each of those.

15              Now, they do move to statewide  
16       administration, which is an act of integration.  
17       However, if you look at the opportunities for  
18       statewide integration, the current utilities are  
19       exploring and pursuing those on a basis of  
20       integrated res, nonres and new construction  
21       programs within service territories that are now  
22       moving to statewide administration.

23              This would segregate those areas of  
24       program delivery. It also would segregate  
25       evaluation from or begin to segregate evaluation

1 from program management and program  
2 administration. And I think I've expressed this  
3 before, but it's really significant when you move  
4 an evaluator off the floor where the program  
5 manager sits, you have a significant problem. At  
6 least I've experienced that.

7 If you set up a structure where a  
8 different agency or a different organization has  
9 that responsibility, you increase that problem.

10 So, I would just argue that while the  
11 current system has plenty of opportunity for  
12 change, and you've heard a lot of people talk  
13 about the opportunity, I would say that it's  
14 important that you experiment, that you move  
15 slowly, unless this Commission comes to the  
16 conclusion that it's broken, in which case I would  
17 change the nature of my comments. I don't happen  
18 to believe that.

19 Thank you.

20 PRESIDING MEMBER LAURIE: Thank you,  
21 sir. Questions at this point?

22 COMMISSIONER PERNELL: I have a couple,  
23 Chris, for you and probably some of the IOUs. And  
24 this is just to help me in the -- your opinion of  
25 the contract versus regulatory structure. I mean

1       which would you prefer?

2                   MR. CHOUTEAU:  Yeah, --

3                   COMMISSIONER PERNELL:  This can be yes,  
4       no, with an explanation.

5                   MR. CHOUTEAU:  Regulatory model.  It's  
6       the present model.  It's known.  I think there are  
7       ways to introduce this Commission to that model in  
8       a way that provides this Commission control.

9                   It would require the establishment of  
10       new regulation.  And it would --

11                   COMMISSIONER PERNELL:  Well, if it --  
12       let me just stop you there.

13                   MR. CHOUTEAU:  Yeah.

14                   COMMISSIONER PERNELL:  If it requires  
15       what my Advisor, Laurie ten Hope was talking  
16       about, and Commissioner Laurie, on how do we then,  
17       if we're going to have some type of structure, we  
18       would then have to change the regulatory scheme of  
19       what the PUC is doing.  And that takes  
20       legislation.

21                   And you're saying you don't necessarily  
22       want a break in, you know, you want continuity and  
23       this to keep rolling.  Wouldn't that then cause  
24       some disruption in the process, trying to go  
25       through -- knowing what I know about legislation

1       and you probably know, as well. Normally it takes  
2       two years to get anything of substance through the  
3       Legislature.

4               By that time we would be out of time.  
5       So I'm just throwing this out there to -- I think  
6       that there are other ways in which we can do it  
7       and still get the job done.

8               MR. CHOUTEAU: I guess I said earlier in  
9       this proceeding that with willing hearts and minds  
10       we can get it done either way. And the question  
11       that you have is one of, you know, what's most  
12       practical, and what are the consequences of  
13       choosing the different ways.

14               I happen to believe that if the  
15       Legislature did take two sessions, and I certainly  
16       would agree that's possible, that if the model  
17       that was being debated, if the model that was  
18       adopted was the regulatory model, I do believe  
19       that between the two Commissions that you would  
20       have -- you could have continuity in the  
21       administrators and the programs while the  
22       regulatory structure was developed.

23               In other words, I think from the  
24       market's point of view it would be less disruptive  
25       to change the regulatory governance than it would

1       be to change the administrators or the  
2       implementers, or how you do that process.

3               COMMISSIONER PERNELL: Right, and then  
4       my second question is the issue of conflict of  
5       interest. And it has come up throughout this  
6       whole proceeding. I just haven't seen a good  
7       example of what that is. I mean I'm probably  
8       asking the wrong person, but --

9               (Laughter.)

10              MR. CHOUTEAU: Well, you know, sure, I  
11       mean in one sense you are, but actually in one  
12       sense I am the right person to ask. I guess --  
13       I've made a statement on this before.

14              I think it's encouraging that you  
15       haven't heard an example. I think it's  
16       encouraging that the Public Utility Commission has  
17       come out in a recent decision and said that there  
18       isn't a conflict, despite the concerns that they,  
19       as a Commission, had expressed two years ago.

20              And it doesn't mean that there isn't one  
21       in theory, because you wouldn't be getting the  
22       input you are if there wasn't, you know, the  
23       potential for one, the appearance of one in  
24       theory.

25              It turns out in fact it doesn't play out

1       that way, as long as the utilities are incented to  
2       administer these programs. And I've expressed  
3       before that the place where I would expect that  
4       conflict to show up first, before you would hear  
5       the example from the marketplace, is in my own  
6       planning sessions, in my own budgeting sessions,  
7       in the utility.

8               And I'm not -- I would be wrong to say  
9       that this question never gets raised. But I've  
10      never heard this question prevail as an issue that  
11      would in any way change the utility strategy  
12      towards the programs.

13             The programs will go forward. The  
14      public goods charge will go forward if this  
15      Commission is successful and adopts, continuance  
16      of the funding, whatever energy savings occur will  
17      occur with our customers in our service territory.

18             Our choice is do we want to participate  
19      or not. Do we think it's in our customers'  
20      interest. Do we think it's in our company's  
21      interest to participate in these programs, to  
22      profit by these programs, and to help our  
23      customers make wise choices about energy. The  
24      answer is yes, we do think that's the case.

25             And if we didn't choose to, we would

1 still be left with somebody else managing these  
2 programs, somebody else delivering savings. The  
3 result would be the same, our bottomline.

4 COMMISSIONER PERNELL: Okay, and the  
5 last question is you mentioned, I don't know  
6 whether it was today or at a different workshop,  
7 that the utilities are coordinating with maybe the  
8 same implementers statewide for programs, that you  
9 guys are working together.

10 Is it uncomfortable for you to run a  
11 statewide program? Do you see that's something  
12 that the utilities, IOUs can do, as it relates to  
13 energy efficiency programs?

14 MR. CHOUTEAU: I guess I wouldn't use  
15 the word uncomfortable, but I understand the  
16 question. And, you know, when this was going to  
17 be bid out by the Commission I said we, PG&E,  
18 would bid. And that was going to be a statewide  
19 program. We say we would bid.

20 But that's not the same thing, even  
21 then, you know, it's not the same thing as  
22 agreeing that that's the smartest thing to do, the  
23 right way to go.

24 When I anticipated doing that I knew  
25 that the difficulties would be if I had won that



1       bid to try to enlist the other utilities in  
2       delivering programs in their service territory,  
3       because that's how I would anticipate being  
4       successful in the majority of the programs.

5               I decided we'd cross that bridge when we  
6       came to it. But that's what -- to me that's what  
7       it means for a utility to run a statewide program,  
8       it means I'm going to have to enlist the other  
9       utilities in their service territories to continue  
10      to support and provide programs.

11             I don't know if I -- you know, I don't  
12      know if I would be successful doing that. I knew  
13      I didn't have any choice before.

14             Given the Commission has a choice now, I  
15      say the preferable choice is to have the utilities  
16      continue to work together to improve and expand on  
17      their efforts at statewide coordination.

18             COMMISSIONER PERNELL: I know I said  
19      that was the last question, but I've got a follow  
20      up to that.

21             Would you suggest then that that be done  
22      on a voluntary basis with the utilities, that they  
23      would work together to insure that a statewide  
24      program ran for the benefit of the consumers?

25             MR. CHOUTEAU: I think it's very helpful

1       for the utilities to be given objectives and  
2       policy guidance as they have been by the CPUC.  
3       And for the utilities to receive comment and  
4       suggestion and direction on their specific program  
5       plans.

6                You know, I don't consider this to be  
7       100 percent voluntary process. I consider this to  
8       be a cooperative process with currently the board  
9       and the Commission and the stakeholders.

10               I think the utilities have responded to  
11       encouragement and would continue to respond to  
12       encouragement. This Commission, should it have  
13       the governance, would, in my view, under a  
14       regulatory model, would have both the direction,  
15       the regulatory power to set orders, to have the  
16       CPUC simply perform the audit and rate function  
17       for them. And to continue to award incentives.

18               And I think all of those are incredibly  
19       persuasive when it comes to utilities.

20               PRESIDING MEMBER LAURIE: I would only  
21       ask that in your written submittal you attempt to  
22       give thought to the regulatory scheme. I think we  
23       need help understanding how that might work.

24               MR. CHOUTEAU: Okay.

25               PRESIDING MEMBER LAURIE: Any other

1 questions?

2 MS. TEN HOPE: You've cautioned us to  
3 move more slowly, but I'm not clear what we'd be  
4 moving to on a slower path. What's your vision of  
5 what this model would look like given more time?  
6 Is it the staff model, but take more time? Or  
7 some other model?

8 MR. CHOUTEAU: That take more time  
9 comment was regardless of model, regardless of  
10 which way you choose to go. I think you need to  
11 go more slowly.

12 I don't happen to believe the staff  
13 model is the right way to go. I believe that if  
14 you continue to push for some of the things that  
15 you've heard about, statewide approaches, opening  
16 this process for innovative approaches by other  
17 parties, you know, continuing to expand on  
18 emerging technologies and the cooperation and  
19 coordination of emerging technologies, continuing  
20 to look for integration across not just our  
21 program statewide, but the CEC's programs, the  
22 muni's, all of those things I see as could be  
23 incrementally improved upon.

24 I don't see the model that's proposed in  
25 the staff report as being necessary. And the

1           timeframe, I think it would be disruptive.

2                   MS. TEN HOPE:   So the model is the  
3           existing model with some variations to improve  
4           coordination?

5                   MR. CHOUTEAU:   Yeah, my approach would  
6           be that this Commission would have governance.  
7           That it would be a regulatory model.   That the  
8           Energy Commission would continue to run programs,  
9           possibly expand the programs that they are  
10          running.   That those programs would become more  
11          integrated with the programs that the utilities  
12          are offering.

13                   That measurement, evaluation and market  
14          assessments would become more integrated; data  
15          would become more integrated.   That we would look  
16          for opportunities to expand beyond this Commission  
17          and the utilities to the muni's and other parties.

18                   That we would be more creative and open  
19          to the innovative approaches and the offerings of  
20          other third parties, public agencies, local  
21          governments, private sector.   That we would  
22          continue to look for and expand upon statewide  
23          efforts, where statewide was the right way to go.  
24          And it isn't always.

25                   MR. MATTHEWS:   Commissioner, if I may,

1 I'd like to respond to Chris', and several  
2 others', question about what's broken.

3 It seemed to me that the reason that  
4 we've gotten to this point comes from the basic  
5 belief that competitive, free market providers  
6 provide more high quality, low cost goods and  
7 services than regulated monopolies. And that's  
8 what got us in this whole thing to start with.

9 What is broken is that the PUC was  
10 unable to transfer to independent administration  
11 for a variety of reasons, not the least of which  
12 is they provided no resources to help CBEE try to  
13 do that.

14 You know, what I hear you going to is  
15 saying, well, we don't really need to go to  
16 independent administration. The utilities are  
17 doing a good enough job, because we can't point to  
18 any obvious conflict of interest.

19 That may be the case, a lot of people  
20 who believe you have conflict of interest just  
21 have not spoken. I don't know why. We tried to  
22 jazz them up to get them to speak, but they're  
23 not.

24 But, from a personal view I still  
25 believe that competitive forces, you know, provide

1 services better than regulated monopolies. And I  
2 think we need to go to independent administration.

3 We are obviously over-optimistic that  
4 the PUC could go to independent administration in  
5 nine months. And I don't remain convinced that,  
6 you know, we are overly optimistic that we can do  
7 it in two years. That's about what we did to get  
8 PIER up and running. And we've learned a lot  
9 since then.

10 MR. CHOUTEAU: And I agree with you 100  
11 percent that the policy to move to competitive  
12 provision of these services is a real plus for  
13 everybody involved.

14 My point of view is that competitive  
15 administration is a red herring. And we spent  
16 four years at the Commission expending innumerable  
17 resources, time and effort on that issue, and  
18 missing the golden opportunity, which is the  
19 competitive delivery in the marketplace.

20 And we'd been achieving that. I mean  
21 I've said before, you know, 80 percent of the  
22 dollars do go out to the private marketplace, to  
23 private providers, to engineering firms, to  
24 customers.

25 But, there's still opportunity to

1       improve on that. And we've done some of that.  
2       And, you know, I know you have questions with the  
3       SBP program, and you know, it's too soon to tell.  
4       I believe the ESCOs have a lot to offer.

5               But that's my position. And, you know,  
6       I think we have a difference of opinion. But I  
7       believe that the competitive administration is a  
8       red herring. And it draws our attention away from  
9       where the real goal is.

10              PRESIDING MEMBER LAURIE: Thank you,  
11       sir.

12              MR. CHOUTEAU: Thank you.

13              PRESIDING MEMBER LAURIE: How do you fit  
14       into the Miata?

15              (Laughter.)

16              PRESIDING MEMBER LAURIE: My car is my  
17       wife's car. And there's nothing more humorous  
18       than to watch an old, short, fat, bald guy fall  
19       into a sports car. And I have that problem. I  
20       don't know how you do it at all, but  
21       congratulations.

22              (Laughter.)

23              PRESIDING MEMBER LAURIE: Mr. Rufo.

24              MR. RUFO: Good afternoon. I'm Mike  
25       Rufo with Xenergy. We are an energy consulting

1        firm. We do a lot of work in impact evaluation,  
2        market transformation, market effect studies. We  
3        do program implementation work with the utilities.  
4        We do a lot of work on restructuring the  
5        electricity industry and natural gas industries.

6                The comments that I wanted to offer  
7        today have to do with three points. One, with  
8        respect to the report I'd like to see -- and it's  
9        come up a lot today, you've already heard it, but  
10       one more time, is to work on the language and the  
11       communication in the report to kind of remove the  
12       polemic or the perceived polemic between market  
13       transformation and resource acquisition.

14               It's kind of an academic debate, I agree  
15       with what Mike Messenger said earlier. I think a  
16       lot of those details we can kind of hash out  
17       offline and we don't need to necessarily drag the  
18       Legislature into an academic debate about some of  
19       these things, but we need to find some common  
20       ground language, because if we all sit down over  
21       lunch I think that, you know, and we really talk  
22       through the jargon, we all tend to agree about  
23       what we're trying to do here.

24               But right now there's a bifurcation  
25       going on throughout this whole process. And kind



1 of two camps developing. I think it's really  
2 unnecessary. I think there's much more of  
3 agreement than there is disagreement, but for  
4 whatever reason the way things are being  
5 communicated in the report are not resonating with  
6 some of the parties in ways that they might.

7 So, I think you've heard specifics from  
8 various parties on what maybe could be done about  
9 that. I'll give a couple examples, too.

10 The second issue is avoiding a hiatus in  
11 the program, and that's going to lead me to an  
12 observation about this administrative transition  
13 structure, and I'll throw out another possible  
14 proposal that I think has been implied in some of  
15 the discussion, but not stated explicitly.

16 And then the third is with respect to  
17 the report, making the case for funding stronger.  
18 And I think several parties already had mentioned  
19 that today. Rita mentioned it and Steve mentioned  
20 it. And I mentioned it, I think, at the last  
21 hearing.

22 A more compelling case on why the funds  
23 are justified, what has been achieved with public  
24 goods charges in energy efficiency over the last  
25 10, 20 years. Things that think press release,

1 things that the press, when they pick this report  
2 up, they're going to be able to relate to.

3 What are the pounds of pollution reduced  
4 through these energy efficiency programs. You  
5 know, pictures of what energy consumption would  
6 have been with and without programs over time.  
7 EPRI had a nice graph about 1994 that did that, a  
8 very kind of powerful graphic. ACEEE has done  
9 some good work there, documenting some of the  
10 market transformation stories that we do have,  
11 because there are a lot of good ones.

12 Another point that I'll make later, is  
13 that some of those stories tie back to rebates  
14 that were carried out under more of a resource  
15 acquisition mode. So, these things are not  
16 necessarily directly opposing approaches.

17 There was also, I think, an article in  
18 "Scientific American" back in the early '90s,  
19 Henry Levins and EPRI put that together. Look at  
20 those types of things in terms of ways of  
21 communicating that political case, because, you  
22 know, I think I'd like to assume it's a slam-dunk,  
23 but I don't really know. I don't know the  
24 political process that well.

25 But I'd like to see something that's a

1 really crisp, clear case demonstration of the  
2 benefits that have been achieved that would play  
3 well, you know, on the front page of the L.A.  
4 Times or the Chronicle.

5 So, moving to some of the specifics.  
6 With respect to the transition plan, I guess I am  
7 in the camp of now being a little bit worried  
8 about getting out even just the one nonresidential  
9 \$100 million contract in two years.

10 I have less experience and expertise  
11 with the public side of this than a lot of the  
12 other parties that have spoken, but you know, kind  
13 of just looking at the experience, it does look a  
14 little scary.

15 So, one thing that --

16 PRESIDING MEMBER LAURIE: Mike, let  
17 me --

18 MR. RUFO: Yeah.

19 PRESIDING MEMBER LAURIE: -- interrupt.  
20 Which experience are you referring to that causes  
21 insecurity?

22 MR. RUFO: I'm referring to the  
23 experience with the CBEE and the PUC attempting  
24 to -- and then also looking out around the country  
25 at some of the other models.

1                   And I think there are some models that  
2                   are in progress, but I think as Peter noted, none  
3                   of them are as big as California. So there are  
4                   some states that are probably going to  
5                   successfully get out a new administrative process,  
6                   but not of the order of magnitude of this in this  
7                   amount of time.

8                   So one thing that I think might want to  
9                   be considered, I appreciate the staff having kind  
10                  of heard that comment last time and coming up with  
11                  the approach of having the utilities be able to go  
12                  after the three program areas, three of the five  
13                  program areas.

14                  But what I think might make a little bit  
15                  more sense or something that should be considered,  
16                  is if we look at this, you know, your overall flow  
17                  diagram with the big boxes, instead of picking a  
18                  couple boxes and saying, you know, have the  
19                  utilities do that and not do this. That kind of  
20                  presumes, you know, assumes right out of the gate  
21                  where the core competencies are.

22                  Why not go with the transition plan over  
23                  time that in 2002, you know, you draw a hash line  
24                  through each of these boxes where you continue the  
25                  utility administrators, and then you start to bid

1 out specific pieces, and I wouldn't even presume  
2 to pick what those pieces would be as part of this  
3 report.

4 But to look, you know, as part of the  
5 process of developing RFPs, you know, what pieces  
6 of residential, what pieces of nonresidential,  
7 what pieces of new construction and reliability  
8 would make sense to bid out to the private market  
9 in a smaller piece, instead of having \$115 million  
10 piece in year one, you've got, I don't know, who's  
11 knows what the number. You'd have to figure out  
12 what those shares were, \$20 million piece, and  
13 maybe have the utilities doing \$80 million.

14 And maybe that amount then phases down  
15 over time, and maybe it never goes to zero because  
16 you find out that utilities, you know, are the  
17 best market actor to deal with certain aspects of  
18 programs, energy centers, whatever they turn out  
19 to be.

20 Maybe the floor is 30 percent, maybe  
21 it's 50 percent. Who knows what it is. We don't  
22 really know.

23 But that would sort of give that  
24 insurance policy aspect to year one, where you  
25 wouldn't be at risk for hiatus in any of the

1 boxes. You kind of phase down over time.

2 And that's still distinct from the  
3 innovative initiatives. I wouldn't mix those two  
4 concepts up. I think you still need to have a  
5 separate innovative initiatives box. And I'd be  
6 glad to see that in this report, which I didn't  
7 see in the previous proposals. So I think that  
8 makes sense.

9 And I wouldn't presume to be able to  
10 answer the questions that you've been asking the  
11 others about how that would work legislatively, or  
12 from the regulatory point of view. But as a  
13 concept I think it's something that you may want  
14 to think about.

15 And, you know, maybe the basis for a  
16 consensus between some of the parties here that  
17 you've heard from today.

18 It would also allow time to create a  
19 private sector infrastructure to look at over  
20 time, a little bit more gradually.

21 Because even, I think the private sector  
22 is capable of coming with a bid for \$100 million,  
23 but, you know, there really are, in my opinion,  
24 that many players out there are in a strong  
25 position to do that. You'll get big teams of

1 people, but that's going to be a difficult  
2 process. So I would prefer to see that happen  
3 more gradually over time.

4 Moving to the issue of the language and  
5 this polemic between market transformation and  
6 resource acquisition. We've done a number of  
7 market effect studies. We did the study on the  
8 SBC report that gets talked about a lot and used  
9 in different ways. That report has a lot of  
10 caveats that often don't make it into the  
11 discussion.

12 We also did a study back in '97 on the  
13 utility lighting, commercial lighting programs  
14 that were run from '92 to '96. And those were  
15 resource acquisition programs that used rebates as  
16 the main approach. You know, sort of one of the  
17 conclusions we reached there was that rebates were  
18 the missile upon which the information payload was  
19 delivered.

20 So, my point is that good resource  
21 acquisition is market transformation. And bad  
22 market transformation is not resource acquisition.  
23 That there's really a false dichotomy going on  
24 between these things, and if the end goal is  
25 delivering cost beneficial savings, then these are

1 tools and we just need to try to get away from  
2 that polemic a little bit in the report.

3 And if we are going to cite the  
4 literature, I think we need to broaden the  
5 literature a lot more. We either need to just  
6 take the whole thing out and simplify it, as Mike  
7 suggested, or go into a much more academic, deeper  
8 citation of the literature of market effects.

9 Okay, you can see I did this on the way  
10 up, I've got my arrows and everything else. Where  
11 does the next one lead to? I think that's pretty  
12 much it. I've hit the main points now.

13 I do want to make one little technical  
14 point. The figure 1, and maybe staff can clarify  
15 this, on page 24, at least on my page numbering.  
16 It looks like the savings from past programs go to  
17 zero in 2015. And that seems to assume zero  
18 market effects from past programs, that there's no  
19 reinstallation of measures that were adduced by  
20 those programs. I think that might send the wrong  
21 signal. I want to make sure I'm interpreting that  
22 correctly.

23 MR. MESSENGER: I think what that does  
24 is it assumes a certain end date for the programs,  
25 like 2002. And then what you're seeing is all



1       these programs die off, and they don't attempt to  
2       model market effects induced by those programs.  
3       It's simply an estimate of directly attributable  
4       program savings.

5                   So from that sense, it needs to be more  
6       carefully labeled. Because these are, you know,  
7       using the sort of or/a vision of the world, that  
8       you can't count it unless you can measure the  
9       receipt. You have a receipt that shows here's the  
10      equipment and here's the savings.

11                   So it's not an attempt to model the more  
12      general market. So point well taken, and we'll  
13      deal with that.

14                   MR. RUFO: That's it. Thank you.

15                   PRESIDING MEMBER LAURIE: Thank you,  
16      sir.

17                   MR. MATTHEWS: I have one question. I  
18      was intrigued by your stagger idea, I think it may  
19      be a solution to our little dilemma here. But,  
20      instead of taking pieces out of whole boxes, why  
21      not just take whole boxes? Do reliability and  
22      innovative in the first year, and new construction  
23      in the next, and res in the next, and nonres, as  
24      an entirety, rather than trying to divide it up?

25                   And the reason that I'm doing that is

1       that still trying to meet the legislative criteria  
2       of minimizing state administrative costs. So the  
3       fewer large contracts we have, the lower our cost  
4       would be.

5               MR. RUFO: Yeah. I can appreciate that  
6       constraint, but I think that that still is riskier  
7       and potentially much more disruptive to the market  
8       than going for smaller pieces of each box.

9               MS. TEN HOPE: And who's bidding them  
10      out? We would bid out a portion separate as  
11      opposed to the utilities --

12              MR. RUFO: Yeah.

13              MS. TEN HOPE: -- bidding out as a  
14      supplement?

15              MR. RUFO: Yeah. How you would split  
16      that up, that's not easy. But I think you could  
17      probably find some kind of homogenous areas to  
18      pull out without disrupting, you know, the rest of  
19      the portfolio that the utilities are running.

20              MR. SUGAR: And would that assume that  
21      the utilities continue to operate under a  
22      regulatory framework at the PUC?

23              MR. RUFO: I don't have any position on  
24      that, whether it would be that model or whether  
25      they would do that contractually under the CEC.

1 But they would be smaller contracts, the ones that  
2 were going into the private sector, and they'd be,  
3 you know, \$20 to \$30 million in each box, rather  
4 than one \$815 million box.

5 Plus, that would allow time for the  
6 double-edged sword of the utility credibility  
7 factor. I mean in the studies that we've done,  
8 the utilities do have an incredible brand  
9 credibility rating with respect to the energy  
10 efficiency market. And that's, you know, that's a  
11 good thing from the point of view of that's what  
12 we wanted them to do for the last 15 years, is  
13 build that up.

14 Now you're saying we want to get the  
15 halo around some other parties, but, you know,  
16 it's going to take time to do that, so.

17 PRESIDING MEMBER LAURIE: Okay, thank  
18 you, sir.

19 Madam Reporter, how are you doing? Do  
20 you want to take a break? We don't want to get  
21 our tapes wound too tightly.

22 (Laughter.)

23 PRESIDING MEMBER LAURIE: We will  
24 reconvene in about two or three minutes after  
25 four.

1 (Brief recess.)

2 PRESIDING MEMBER LAURIE: Ms. Whiting.

3 MS. WHITING: I had a number of comments  
4 I was going to cover. I'm Yole Whiting from San  
5 Diego Gas and Electric Company, before I forget  
6 that.

7 I had a number of issues I was going to  
8 cover, many of them have already been addressed by  
9 parties before me with respect to some of the  
10 conclusions reached in the draft report. I won't  
11 repeat those. I will address those in written  
12 comments, which we'll get to you as soon as we can  
13 by the end of the week.

14 There are a few things, though, and  
15 having been involved in these programs for a  
16 number of years, and particularly in this process  
17 since AB-1890 was enacted, I absolutely understand  
18 how complex all of these issues are, and how  
19 difficult a task it is to try to sort them out. I  
20 think the staff has tried to do that. I also do  
21 not agree with the conclusions that they reached.

22 I think that there are a number of  
23 issues that they have raised which do need to be  
24 addressed and should be, but again, we haven't  
25 reached the same conclusion about them.

1           I do have some concerns about some of  
2           the fundamental assumptions in the report that  
3           lead to the conclusions that were reached. And  
4           some of those, as I said, have been mentioned.

5           But I want to go to the one which you'll  
6           probably ask me about anyway, which is the  
7           conflict of interest question.

8           This has been before us for a number of  
9           years. I have said in various workshops and  
10          hearings and meetings that the perceived conflict  
11          of interest issue can be addressed; that it does  
12          not have to be a problem. That state policy  
13          directs the pursuit of energy efficiency programs.  
14          Then the regulated utilities, in my view, are  
15          going to follow that state policy. And that any  
16          perceived or potential concerns about that kind of  
17          conflict of interest can be addressed.

18          SDG&E recently received a PUC approval  
19          of a PDR mechanism which contained in it a rate  
20          indexing mechanism for setting rates. I don't  
21          pretend to know exactly how all those formulas  
22          work, but the bottomline of that is it does allow  
23          the utility to benefit from increased sales.

24          That decision was appealed by several  
25          parties, mainly on the basis of that portion of

1       the mechanism. And on November 4th the PUC issued  
2       a decision which basically says that they did not  
3       find that mechanism was necessarily inconsistent  
4       with energy conservation or energy efficiency  
5       state policy.

6               They did not find that the rate indexing  
7       mechanism was likely to adversely impact those  
8       policies. And that they did not see in front of  
9       them any evidence that SDG&E had done anything or  
10      would do anything under that type of mechanism or  
11      approach that would be in conflict with those  
12      policies.

13             We have been under a similar situation  
14      since 1998 when ERAM was eliminated, and that was  
15      the mechanism that addressed the sales issue.

16             This decision found that contrary to  
17      allegations that SDG&E had not done anything in  
18      1998 to take advantage of that opportunity, and in  
19      fact, found that SDG&E achieved excellent energy  
20      efficiency results for 1998.

21             The decision goes on to address the fact  
22      that the reason this occurs is that there is  
23      sufficient -- it doesn't say sufficient, I would  
24      call it a lot of oversight of what the utilities  
25      do in this area of energy efficiency.

1                   And this is something again that we've  
2                   argued for several years, we do not operate in a  
3                   vacuum. As a regulated utility, as part of this  
4                   public process in setting and monitoring and  
5                   overseeing these programs, that it is not an easy  
6                   thing to do to ignore state policy, Commission  
7                   direction and Commission decisions. And this  
8                   decision found that.

9                   I'm very heartened by this decision  
10                  because I believe that it supports what we've been  
11                  saying, that this does not have to be a problem.  
12                  If parties are concerned about it, it can be  
13                  mitigated.

14                 We have not backed off of our efforts  
15                 with energy efficiency. We have achieved  
16                 outstanding results. We're continuing to do that.  
17                 We would plan to continue to do that, with or  
18                 without the rate indexing method, or anything  
19                 similar to it.

20                 So, this is a fairly new decision. I  
21                 don't know that all parties have seen it, but I  
22                 wanted to make sure I took the opportunity to make  
23                 you aware of it, for another viewpoint.

24                 Commissioner Pernell had asked Bob Burt  
25                 for some examples of abuses where this conflict of

1 interest had occurred. He couldn't cite any. I  
2 still haven't heard of any. And now what we have  
3 is an instance where the PUC has looked at it and  
4 found that at least in this particular case it did  
5 not exist.

6 MR. MATTHEWS: What's the number of  
7 that, Yole?

8 MS. WHITING: 9911029, issued on  
9 November 4th.

10 The other point I wanted to make is, as  
11 I was reading the report I was looking at a lot of  
12 discussion and even very specific references to  
13 theory-based approach to program design and to the  
14 whole development of the structure and the  
15 direction for the programs.

16 This is something that we've been  
17 dealing with for the last couple of years with the  
18 process going on at the PUC and with the  
19 California Board for Energy Efficiency.

20 When this process started one of our  
21 first comments to staff in looking at this report  
22 was to be sure to take into account from our view  
23 what has been missing from the process for the  
24 past couple of years, and that's customer input.  
25 What is going to work with customers.



1                   And in my reading of the report I don't  
2                   see an emphasis there that I think should be  
3                   there. What we have found in trying to operate  
4                   these programs, whether they're market  
5                   transformation programs, resource-based programs,  
6                   whatever they are, they're not going to work if  
7                   customers aren't going to participate in them. If  
8                   they're not acceptable to customers or to the  
9                   marketplace.

10                  We have heard from customers about  
11                  things that they think work and don't work. What  
12                  they are interested in doing. We can't force them  
13                  to do things that they don't want to do.

14                  And in my view this is particularly true  
15                  if you're trying to look at long-term, sustainable  
16                  results. That it is absolutely critical to get  
17                  the public input into this process. And to get  
18                  that viewpoint. And frankly, I don't see that in  
19                  the report, unless I've missed it. I certainly  
20                  didn't see it as an emphasis.

21                  And it's a huge concern for me, because  
22                  I think that it's going to, without that, it  
23                  really hampers the potential success of any  
24                  programs that are undertaken, no matter who the  
25                  administrators are, or who's implementing them.

1                   So I would urge again that that be a  
2                   focus. What are the market participants saying,  
3                   what are the customers saying.

4                   We have found that customers have a lot  
5                   of concerns about deregulation and about working  
6                   with parties that they're not familiar with. And  
7                   the role that we've played over the last couple of  
8                   years, in particular in some of the programs like  
9                   the standard performance contract program, is to  
10                  try to make that easier for them to understand,  
11                  something that they would be willing to  
12                  participate in, programs that they do feel  
13                  comfortable in being a part of. And that's not  
14                  always easy.

15                 Energy is not a high cost for consumers  
16                 right now. It is not at the top of their priority  
17                 list. It's not always easy, even when you can  
18                 show a customer the economic benefits, it's not  
19                 always easy to get them to take certain actions.

20                 And if the program designed does not  
21                 address their concerns, it does not make it easy  
22                 for them and understandable, and show them very  
23                 tangible results, then I don't think they can be  
24                 successful.

25                 So, my other major point is that I think

1       it's absolutely imperative that that whole area of  
2       customers be addressed.

3               The other point I wanted to make is the  
4       concerns I have about the impacts. I've heard  
5       this process described as turning everything  
6       upside down. I've heard it described as an  
7       evolutionary process.

8               In my reading of the report, after  
9       reading it a couple of times to make sure I  
10      understood it, as one who potentially is on the  
11      receiving end of this evolutionary process, it  
12      does not sound evolutionary to me at all. These  
13      are not baby steps we're talking about here.  
14      These are very real changes.

15              SDG&E does not run programs in northern  
16      California. That would be a huge change for us to  
17      do that. We do not bid on running programs. That  
18      would be a change. We're not used to contracts.  
19      That would be a change.

20              I'm not saying that all change, you  
21      know, is bad and there should not be any change,  
22      but the fact is that this is a very different  
23      scheme from where we are today. And my concern  
24      about that, I have a number of concerns, but one  
25      is that the very strengths that the staff report

1        talks about, that the utilities can offer to this  
2        process, and they're strengths that we've talked  
3        about, too. The credibility and the trust with  
4        customers; the infrastructure that's in place.  
5        Those all exist in our local service territories.  
6        That's where those strengths are.

7                We could transfer those perhaps outside  
8        of our service territory, but the real value of  
9        those are within the service territory. Those are  
10       the customers we know. Those customers look to us  
11       with their energy questions.

12               I'm not saying it's impossible to do the  
13       transfer statewide. I don't believe that it's the  
14       best way to use what has developed at the  
15       utilities over the last ten or so years in running  
16       these programs.

17               So, that is one area again that I think  
18       is of strong concern, that if we're going to look  
19       at taking advantage of the current system, let's  
20       really take advantage of it. And, again, I do not  
21       believe from what I have read that these are small  
22       steps. These are very major changes.

23               The other issue is, I'll go back to what  
24       Chris Chouteau said about what's broken. I've  
25       read and heard staff talk about enhancements to

1 the program.

2 To be very honest with you, there are  
3 portions of this report where it talked about  
4 changes and new approaches, that when I read them  
5 I was very surprised, because they are no  
6 different from what we do today.

7 The description of market based  
8 approaches and running pilots and doing evaluation  
9 along the way, we do those things today. They're  
10 not brand new ideas. Some of them could be  
11 emphasized in different ways, some of them maybe  
12 could be done differently. I can only conclude  
13 that maybe we haven't spent enough time with, you  
14 know, providing a really good understanding of how  
15 the programs are operated today.

16 But there is a lot that's already  
17 accomplished through the programs. And that  
18 should be understood before large scale changes  
19 are suggested.

20 Another point, again getting back to the  
21 issue of statewide, and this is a very specific  
22 point I wanted to make, we've always been very  
23 concerned about the issue of funding being  
24 collected throughout the state from the various  
25 utility customers going into one pot of money.

1                   And then the concern is how does that  
2                   get allocated back to the customers who pay it.  
3                   SDG&E's customers pay for these programs on their  
4                   bills to us in an expectation of receiving  
5                   services back for what they pay. That's provided  
6                   now, as those funds go back to the customers who  
7                   pay them.

8                   But if there's going to be a statewide  
9                   model I think that's something that really needs  
10                  to be looked at. If the money is going to be  
11                  collected and put all together, I did not see in  
12                  the report any discussion of how does that get  
13                  allocated back to the customers who are paying it.

14                 There is discussion about residential,  
15                 nonresidential, that's something we've been  
16                 working on for the last couple of years, or been  
17                 focusing on. But especially being down at the  
18                 other end of the state, we have a real concern  
19                 about that.

20                 I also, while talking about the whole  
21                 issue of statewide, is -- I've never quite  
22                 understood how that was going to work in statewide  
23                 California, with the huge regional differences  
24                 that occur.

25                 I always envisioned a statewide

1 administrator as having to set up regional  
2 offices. And I'm not sure what efficiencies we're  
3 gaining from that approach.

4 Another aspect about the current  
5 programs that perhaps isn't well understood is the  
6 extent to which they've changed over the last  
7 couple of years. The extent to which we have  
8 statewide coordination of programs where that  
9 makes sense. It does not make sense for every  
10 program. There are activities that really make  
11 more sense to be done locally.

12 We do out-source a large majority of the  
13 service delivery. A majority of our funds do go  
14 out to the private market. We are out encouraging  
15 customers to work with the private market. We do  
16 have third party programs in place and we are  
17 getting ideas from other parties.

18 There's a lot that's already happened,  
19 and my question would be to what extent is it  
20 necessary, if those are the objectives and the  
21 direction the Commission would like to go, to what  
22 extent is it necessary to start over with a new  
23 administrative structure, or to improve on the  
24 current structure.

25 And again, I'm not proposing that

1 nothing change. That's too many negatives. But I  
2 am not an advocate of no-change. I think changes  
3 are necessary. Changes have occurred over the  
4 last couple of years. Very large changes. I know  
5 in some parts some things have gone very slowly,  
6 but again, where I sit things are very different  
7 now than they were a few years ago.

8 So I think it's going to be very  
9 important to look at, you know, what's the need  
10 for the changes. What are they going to gain.  
11 Where are the efficiencies. Where are the  
12 improvements. How is the new structure and the  
13 new program approach, if there is one, going to be  
14 beneficial, how is it going to be better than what  
15 we have today.

16 Finally, well, finally I have two  
17 things, I'm sorry. The whole issue of hiatus in  
18 continuity. As I mentioned, I think that these  
19 are huge changes that are being suggested. We've  
20 lived through great disruption in these programs  
21 over the last two or three years, great confusion  
22 among customers, start and stop, who's going to do  
23 what. A lot of uncertainty in the marketplace.

24 And so my plea, and I've made this plea  
25 over the last three years, also, is that realistic



1 schedules be set. We've lived under ambitious  
2 schedules that then have to get changed  
3 frequently, and have been changed frequently. It  
4 causes us problems within the utility; it would  
5 cause any administrator a problem.

6 But, more importantly, it causes great  
7 problems out in the marketplace. Because the  
8 marketplace and customers demand some certainty in  
9 what's going to be happening in the next few  
10 years.

11 I know if there's a desire to get some  
12 things done quickly then let's look at what things  
13 can be done easily quickly and can really happen.  
14 If it means setting a longer schedule, and that's  
15 more realistic, then I would urge you to do that.

16 You may ask me about the issue of  
17 contracting versus the regulatory model. I prefer  
18 the regulatory model. I'm comfortable with it, I  
19 know the regulatory model, I know it works. I  
20 understand from your viewpoint you all feel that  
21 way about the contracting model.

22 I think we need to talk about that more,  
23 and understand how the two of them work and  
24 whether there is some kind of a hybrid. I don't  
25 know.

1                   My view of the contracting model is  
2           that -- or at least my understanding of it, and my  
3           concern is that it would not allow enough  
4           flexibility. That once things are locked into a  
5           contract there's not the kind of flexibility to  
6           make changes that need to be made as we move  
7           forward. Particularly when we're trying out  
8           things that are new.

9                   If there's a way for that not to occur,  
10          you know, that would help mitigate that concern.  
11          But I've always viewed the contracting model as  
12          one that is much more rigid, locked into place,  
13          has much less flexibility than the regulatory  
14          model.

15                  Those are my major comments. I'll stop  
16          in the interests of time, and we'll provide some  
17          written comments by the end of the week.

18                  PRESIDING MEMBER LAURIE: Before I ask  
19          for questions, Ms. Whiting, it's 4:20. It is now  
20          4:20. I think you have an airplane that takes off  
21          in 30 minutes?

22                  MS. WHITING: I do.

23                  PRESIDING MEMBER LAURIE: Do you have  
24          time to take questions or would you like to  
25          leave --

1 MS. WHITING: I'll take questions and  
2 take a later flight.

3 PRESIDING MEMBER LAURIE: Okay.

4 COMMISSIONER PERNELL: I think you've  
5 answered all of my questions. Yeah, I'm fine.

6 MR. MATTHEWS: Just one, Yole. I've  
7 been fascinated and I want you to make your plane,  
8 and you've allowed me to make planes from San  
9 Diego before, so -- it's really surprising from my  
10 point of view to hear you and Chris promote the  
11 regulatory model, and Don Schultz to promote the  
12 contract model. I'm just befuddled by that.

13 (Laughter.)

14 MR. MATTHEWS: And, you know, from my  
15 point of view, just watching through my experience  
16 on the advisory committees, the relationship  
17 between your programs where I've always found San  
18 Diego to be very innovative, and watching the PUC,  
19 which I always -- my impression was that they  
20 tended to resist innovation because it was new and  
21 different, we need to talk about how the contract  
22 model would work.

23 But I would think it would be a lot more  
24 flexible than the regulatory model. At least  
25 potentially.

1 MS. WHITING: Let me talk about that, if  
2 it's possible. I think the regulatory model for  
3 the past two years is very different than the  
4 regulatory model -- I don't think I -- before  
5 that.

6 MR. MATTHEWS: That's true, but it  
7 sounds to me like you're going back to the old  
8 system.

9 MS. WHITING: No, no, I'm just talking  
10 in general about a regulatory model versus a  
11 contract. You know, in a regulatory model things  
12 can change overnight, and do. We're real good at  
13 following Commission decisions and direction from  
14 whoever the regulator happens to be.

15 And that's how the regulatory model  
16 works. And if things need to change at some point  
17 and that direction changes, they do. If there's  
18 policy, for example, to have statewide programs or  
19 to have out-sourcing or to have whatever, that  
20 policy is given and we respond to that.

21 I don't know how that would work in a  
22 contract model. I'm not saying that the current  
23 regulatory process is the best. I don't think it  
24 is. I wouldn't want to continue that, or go back  
25 necessarily to the old one.

1                   But I'm having trouble in my mind  
2           figuring out what happens when you have a written  
3           contract. What happens if new things come up that  
4           need to change suddenly. Or what happens if  
5           things aren't going the way you thought.

6                   My view of it was, you know, at least in  
7           our dealings with folks where we have contracts,  
8           is that we always go back to what's in the  
9           contract. And to me that's more limiting than  
10          what we've been working under.

11                   COMMISSIONER PERNELL: I'm a little  
12          confused on the regulatory model that you're  
13          articulating. You're saying that there's more  
14          flexibility on a regulatory model, and that they  
15          can change at anytime they get ready?

16                   MS. WHITING: With the direction coming  
17          from the regulator, I mean the policy comes there.  
18          We don't have to go and rewrite a contract or  
19          renegotiate a contract.

20                   We have changed, I mean the direction of  
21          some of these programs has changed over the past  
22          couple of years. For example, there has been PUC  
23          direction to coordinate our efforts statewide, to  
24          do more out-sourcing. And we've done that.

25                   And that was directed, you know, as part

1 of their policy.

2 COMMISSIONER PERNELL: All right, so  
3 that's administrative directive. My view of the  
4 regulatory process is one that the Legislature  
5 sets up, and then in that process -- so you've got  
6 just framework. Inside that framework is  
7 administrative structure that can bounce backwards  
8 and forth.

9 And so I'm just trying to make sure that  
10 we're talking about the same thing, whether you're  
11 talking about the administrative structure or the  
12 regulatory structure.

13 MS. WHITING: Okay, now I'm a little  
14 confused. As the administrator we're the  
15 regulated entity. And so --

16 COMMISSIONER PERNELL: Right. And you  
17 are regulated because of 1890 or whatever put that  
18 regulation in place and gave it to the PUC.

19 MS. WHITING: Well, the PUC had it  
20 before 1890. The focus and the nature of it --

21 COMMISSIONER PERNELL: Okay, so they --

22 MS. WHITING: -- has changed somewhat.  
23 We've been regulated on these programs for a long  
24 time.

25 COMMISSIONER PERNELL: Okay, so the PUC

1       has the regulatory authority to tell you what to  
2       do with your program?

3               MS. WHITING:  Yes.  We file  
4       applications, we make proposals to the PUC, and  
5       they either adopt them or don't.  Or adopt  
6       something different that someone else has  
7       suggested.  We're in that process right now for  
8       next year.

9               COMMISSIONER PERNELL:  Right, and if  
10       that -- this will be short, Mr. Chairman.

11               Let me just follow this for a minute.  
12       So if the CEC had that, then we would do basically  
13       what the PUC is doing, which is telling you how to  
14       implement certain programs, et cetera.  But we  
15       would do it through contracts.

16               So, you would --

17               MS. WHITING:  And that's what's unclear  
18       to me, that that would happen.  How that would  
19       work through contracts.  But, I think --

20               COMMISSIONER PERNELL:  I think we're  
21       saying the same thing, though.

22               MS. WHITING:  I think we are, maybe it's  
23       just how to do it.  What I would caution is that  
24       we spend a lot of time on this and figure out how  
25       it would work, particularly when we have two

1 regulatory bodies.

2 Because if we're going to be involved we  
3 don't want to be caught in the middle. And we've  
4 been there before. And that's going to be really  
5 important that that not happen, and that it's very  
6 clear who does what.

7 COMMISSIONER PERNELL: Right, right.  
8 But just one further point is I would assume  
9 that -- not assume, but I'm pretty sure that we  
10 would be acting under or within the confines of  
11 whatever regulatory authority that you guys are  
12 governed by.

13 So that if the regulation says that the  
14 IOUs would do certain things, or give a certain  
15 amount, which is, I think, what we're talking  
16 about here, we're not proposing to change that.  
17 Because we don't make rate cases. I don't want to  
18 speak out of turn here, but --

19 MS. WHITING: Well, what I thought, one  
20 way I thought this was going to happen was that  
21 the Legislature would establish, I believe, some  
22 funding levels, maybe some policies, very broad  
23 policies on the program areas; maybe or maybe not  
24 an administrative structure, what they did  
25 generally in AB-1890, and that the Legislature, I



1 believe, would identify then who would have  
2 governance over the programs and what that role  
3 would look like.

4 And if they said that the CEC were the  
5 body that would determine the program policies and  
6 direction, and approve what they were going to  
7 look like, then that's where that would occur.

8 COMMISSIONER PERNELL: Right.

9 MS. WHITING: That's different from  
10 today's regulatory structure where that happens  
11 over at the PUC.

12 COMMISSIONER PERNELL: But that's how it  
13 started. I mean I think that -- I don't want to  
14 be argumentative here, but we're in the beginning  
15 of a process. And what you're articulating to me  
16 is the PUC process which you are familiar with  
17 that it's already going.

18 But when that process began the  
19 Legislature said, PUC, here's the regulatory  
20 structure, you run the program, you set it up and  
21 work with the utilities.

22 And the same process will happen when  
23 the Legislature debates this issue.

24 MS. WHITING: And just one clarification  
25 on that is that the PUC again has regulated us in

1       these programs for a number of years, as long as  
2       they've regulated us, and as long as we've done  
3       the programs.

4               And so what changed in AB-1890 was the  
5       direction of moving towards independent  
6       administration, establishing the advisory board,  
7       the emphasis on market transformation objectives,  
8       those are the kinds of things that changed in AB-  
9       1890.

10              But the way that -- and putting the  
11       advisory board in the middle of this process  
12       changed. But added an element to it. It didn't  
13       replace the old model, though, I mean it's still  
14       in place, we were still -- as part of the problem  
15       is that we now have two processes we're trying to  
16       follow, rather than one.

17              So, we're in the regular hearing process  
18       and the filing process with the PUC, and we've  
19       also got the advisory board over here.

20              But that's the only real change that  
21       occurred. AB-1890, from what I remember, only set  
22       the funding level and said, you know, utilities  
23       collect and spend this much money on energy  
24       efficiency through these years. It did not  
25       address anything else. It said -- it gave the PUC

1 responsibility for that, but it didn't go into any  
2 more detail.

3 COMMISSIONER PERNELL: Right, and it may  
4 have not been 1890, I mean whatever gave the PUC  
5 the authority to regulate utilities, I'm saying,  
6 that was the beginning of the structure. And what  
7 the Legislature's going to do in this case is the  
8 beginning of the structure again.

9 I don't think that we're that far off on  
10 that. And certainly I know that, you know, when  
11 you write your comments we'll be happy to talk  
12 about those issues.

13 But I just don't think that we're that  
14 far off.

15 MS. WHITING: I don't think so, either.  
16 And from what I've heard and the questions you've  
17 asked, I think we're all after the same objective.  
18 And I think, as I said, we need to spend more time  
19 talking about how these two different approaches  
20 could work, or whether there's something in  
21 between them. Take the best out of both, if we  
22 can do that.

23 Don't worry about the time, I can take a  
24 later plane.

25 PRESIDING MEMBER LAURIE: Okay. I think

1 I'll hold my questions until I see your written  
2 comments.

3 MS. WHITING: Okay.

4 PRESIDING MEMBER LAURIE: I think we  
5 have a lack of familiarity about the PUC's  
6 regulatory process and how it would fit in with  
7 our oversight. In my view you can write a  
8 contract just as flexibly as you're doing -- a  
9 contract is a mutually agreed upon statement. You  
10 can put anything in it that you're legally  
11 permissible to do.

12 So you can write it as loose or as tight  
13 as the parties desire to make anything work. So,  
14 I'm not concerned about that. I'm concerned that  
15 you're concerned about that because you have not  
16 been operating under that system. So I think  
17 additional communication, Ms. Whiting, would be  
18 helpful. I will look forward to that.

19 Any questions at this point?

20 MR. MESSENGER: I just have one question  
21 that relates to your desire to minimize the amount  
22 of changes that are being proposed, and you listed  
23 three big ones that would really have an impact on  
24 your company.

25 One was going statewide, one was moving

1 from a regulatory model to a contract-based model,  
2 and another one was dealing with this question of  
3 preparing a bid, which is something that you  
4 usually don't do. You don't bid to be  
5 administrator, you're not accustomed to doing  
6 that.

7 My question is if you wanted us to try  
8 to minimize that amount of change, and you know,  
9 only change one of those variables, as opposed to  
10 three simultaneously, which one is the one that  
11 would be the easiest for you, given where you are  
12 now? Would it be the statewide versus service  
13 territory? Or would it be the contract-based  
14 versus regulatory-based, or would it be something  
15 else?

16 I'm trying to figure out, people are  
17 saying that the rate of change is too fast. So  
18 I'm trying to figure out some way of slowing it  
19 down so that people can adjust to it.

20 MS. WHITING: Well, I think with the  
21 exception of this regulatory contract issue, which  
22 we're talking about, you know, may be something we  
23 can deal with, sounds like it is something we can  
24 deal with.

25 I think either of the other two are

1       problematic. But I think it's not just because  
2       it's, it's not just a change for me or for my  
3       utility, it's what impact does that have on the  
4       programs. Is that better for the programs.

5                If it were better for the programs, and  
6       it was proven this was a better way to go, then  
7       maybe it would be worth it. I'm not convinced  
8       it's better for the program, and in fact, I think  
9       it would be very detrimental, because of the  
10      amount of change that it would involve in  
11      disruption.

12              So, I don't even think we'd be on an  
13      even keel, I think we'd be hurting the very thing  
14      that we're trying to improve.

15              MR. MESSENGER: Just to make sure I  
16      heard you correctly, I heard you say that  
17      statewide may not be better either across-the-  
18      board or in any particular case. Would you also  
19      say it's probably not better to have  
20      administrators bid, i.e., compete with each other?

21              MS. WHITING: I'll go back to what  
22      others have said is I've never believed that a  
23      prime objective of any of this should have been to  
24      create a competitive market for administrators.

25              I don't think that that's really

1 anything we ought to be focusing on. It has taken  
2 attention away to what should be going on.

3 So, sure we can do that. We can prepare  
4 bids. I don't know that that's what we should be  
5 doing. I don't believe it is what we should be  
6 doing.

7 And, again, going back to the statewide  
8 issue, if you want to take advantage of the  
9 strengths that we bring to the process and have as  
10 much -- as least disruption as possible, you can  
11 do that and achieve the goal of having statewide  
12 consistency where it makes sense to have  
13 statewide-run programs, or statewide-consistent  
14 programs, or coordination or whatever you want to  
15 call it, that can occur.

16 That can occur with having the utilities  
17 in the service territories, we have the local  
18 expertise, we have the credibility with the local  
19 customers, we have the accountability to those  
20 customers. Then I think you can make it work.

21 MR. MESSENGER: And that's my final  
22 question. I think you anticipated it.

23 Would you be averse to a system, if we  
24 were to come back with a different recommendation  
25 that said, we want to have statewide programs, but

1 we want to continue to have the same delivery  
2 agents, so we're going to just -- we're going to  
3 either select or specify a lead utility in each of  
4 these three sectors, you know.

5 SDG&E, you're going to be the lead in  
6 new construction. But that doesn't mean you go  
7 out and hire new implementers, that means that you  
8 design the statewide programs and then work with  
9 the existing delivery agents up north and, you  
10 know, SCE.

11 Is that a more gradual step --

12 MS. WHITING: And what would be -- what  
13 would be different about that than what we do  
14 today, where we have statewide programs --

15 MR. MESSENGER: Well, right now no  
16 utility's in the lead, so all three utilities have  
17 to agree before anything happens. Whereas, if we  
18 designated a lead, that lead utility would make  
19 the decision about everything from qualifying  
20 levels to rebate, all those kinds of things could  
21 be done by one person.

22 And then after that was done then the  
23 utilities, themselves, would deliver that program  
24 on a statewide basis. And there would be no need  
25 to, you know, rehire staff to do different



1       deliberations.

2               The infrastructure would be in place,  
3       but it would be a way of more quickly making  
4       decisions about program design.

5               MS. WHITING: I'd have to give that more  
6       thought. I'm not sure it would be more effective.  
7       I think that even under that kind of model we  
8       would still work together to cooperatively come up  
9       with an agreement.

10              I really don't see one of us dictating,  
11      you know, how the programs are going to operate.

12              MR. MESSENGER: Okay, I've seen it the  
13      opposite way, but that's okay.

14              PRESIDING MEMBER LAURIE: Thank you,  
15      Yole, very much.

16              COMMISSIONER PERNELL: Thank you.

17              MS. WHITING: Okay, thank you.

18              PRESIDING MEMBER LAURIE: Ladies and  
19      gentlemen, we have 25 minutes before you have to  
20      clear the room. We have five speakers. I will  
21      apologize in advance, but I think I'll have to  
22      place a maximum five-minute limit on each of the  
23      speakers, and I'm afraid we'll have to insist upon  
24      that. We apologize in advance for having to do  
25      that.

1                   Mr. Berman.

2                   MR. BERMAN: Thank you, Commissioners  
3                   and staff, for the opportunity to comment. And  
4                   I'm going to aim for three minutes.

5                   I'm Mark Berman with Davis Energy Group.  
6                   And it seems to me the staff has attempted to come  
7                   up with a proposal that could be the beginning of  
8                   a consensus. And I suspect the staff is somewhat  
9                   disappointed that that's not what's happened.

10                  I would humbly suggest that all Miata  
11                  owners meet in one of their cars --

12                  (Laughter.)

13                  MR. BERMAN: -- and maybe a few other  
14                  key people, and it seems to me from what I've  
15                  heard, that once the end member is well defined,  
16                  that more of a consensus at least could be  
17                  developed with some input from the utilities that  
18                  are going to have to make all the changes.

19                  We do need maximum support to gain  
20                  passage, as Rita Norton, said, of legislation.

21                  My other comments, two of them. One is  
22                  I'm concerned that if the funding is transferred  
23                  from PUC collection to the Legislature that the  
24                  Legislature, being the kind of body that it is, is  
25                  jealous about its power and I'm afraid that the

1 funding levels will be subject to the political  
2 winds, and it will only be a matter of time before  
3 they go in the wrong direction for the wrong  
4 reasons. Maybe in the right direction for the  
5 wrong reasons.

6 I would suggest that it might be better  
7 to have the PUC continue to be the collecting  
8 body, but that their role be well defined and  
9 limited in that regard.

10 My second concern, or actually it's not  
11 so much a concern, but I'd like to highlight what  
12 Ed Vine was saying earlier about emerging  
13 technology.

14 Perhaps one way to handle it is to call  
15 the innovative initiatives area innovative  
16 initiatives and technologies. And include  
17 emerging technologies in that area, call it out as  
18 such. Otherwise eliminate that and reliability  
19 and make sure that they're both underscored as  
20 being part of all the other program areas.

21 That's the extent of my comments. Thank  
22 you very much.

23 PRESIDING MEMBER LAURIE: Thank you, Mr.  
24 Berman. Your comments are appreciated.

25 Mr. Spasaro.

1                   MR. SPASARO: Thank you, Commissioners,  
2                   appreciate it. My name is Frank Spasaro with  
3                   Southern California Gas, and I'll try to be brief.

4                   For the most part I support a lot of  
5                   what NRDC, San Diego Gas and Electric and PG&E  
6                   have said, so I can do that in the written  
7                   comments that I'll submit by Friday.

8                   But there were a couple specific things  
9                   that I did want to touch upon real quick. I had  
10                  to admit that in my first reading of the report I  
11                  saw there were a lot of good comments in there, a  
12                  lot of good information. And my first impression  
13                  was that it was headed in the right direction.  
14                  And I did that based on reading page 9. I only  
15                  had time to look at that. It sounded pretty good.

16                  But the earlier comment that was made  
17                  about the devils in the details, I have to say  
18                  there are a lot of little devils in the report.

19                  For example, the comment about -- or in  
20                  the summary about continuing to use the UDCs. My  
21                  first impression of that was that that meant we  
22                  were going to keep four UDCs moving along in those  
23                  two program areas, as is, for two more years. And  
24                  that's not what it says. You've heard a lot of  
25                  comments about that, and I won't go into any

1 details about that. But I would just request that  
2 it be a little clearer in the executive summary  
3 about what that specific recommendation is,  
4 because it's not what's in the details.

5 I'd definitely like to see all the  
6 information in there and the support for the  
7 natural gas by passable surcharge -- not by  
8 passable surcharge, the non bypass issue has been  
9 addressed.

10 I was a little concerned when I read it,  
11 however, in that it didn't seem the discussion  
12 specifically addressed the enabling legislation  
13 that would be required to do that.

14 However, Mr. Messenger's comments did  
15 address that. Again, I would just suggest that it  
16 be clear in the report. But that's a critical  
17 item that it be a non bypassable surcharge. And  
18 it is going to require enabling legislation to  
19 make that happen.

20 It was very weak, I must say, though on  
21 the issues of exemptions, and that's going to be a  
22 very contentious point as this enabling  
23 legislation moves forward, which I think the  
24 report recognizes. But I think a lot more work is  
25 going to need to be done in that area.

1                   Regarding funding, we'll say that  
2           SoCalGas certainly supports continuing funding  
3           levels. We would say only at the current levels,  
4           however.

5                   There was first, not enough time, but it  
6           was very difficult to go through the report and  
7           understand exactly what the specific numbers were  
8           to support the increase that's in there. I was  
9           having a difficult time understanding the numbers.

10                  And I would actually support one thing  
11           that Ms. Whiting said about the money being  
12           collected from one particular group and then being  
13           spent on another.

14                  I'm very concerned from a gas versus  
15           electric perspective particularly with the  
16           reliability recommendations that gas customers  
17           could end up subsidizing electric reliability  
18           issues, and to the extent that we voiced many  
19           public comments on this issue before, I would say  
20           this is leading down the issue of it being a tax  
21           and not a surcharge. And we'd be very concerned  
22           as a company about where that's headed.

23                  One specific thing. On the funding, the  
24           M&E dollars that are in there for \$20 million. It  
25           was not clear to me, for example, in the 270 that

1 is the current number, built within that is \$12  
2 million for M&E already.

3 So is the \$20 million request taking  
4 that \$12 million and adding to it, or is it in  
5 addition to the \$12 million that's in there. So  
6 are we talking about \$32 million for M&E, for  
7 example. It just wasn't clear.

8 Let's see. I have to address the  
9 conflict of interest question. To be honest with  
10 you, I certainly can't give you any examples, and  
11 I actually take offense to hearing it as much as  
12 I've heard it, because as a program manager  
13 responsible for design, for implementation, for  
14 the folks that are doing this, that are making the  
15 strategic decisions, this just does not come up as  
16 an issue.

17 What we do is we try to do what's best  
18 for the customer. And if energy efficiency is  
19 best for the customer, that's what's going to get  
20 done.

21 These discussions don't even occur, the  
22 trade-offs that you're talking about, at Southern  
23 California Gas.

24 And then lastly on the transition  
25 issues, I would strongly support what NRDC said.

1 I think that it's been grossly underestimated what  
2 time it's going to take and I would add some  
3 points to address, I think Commissioner Laurie's,  
4 questions about specific items.

5 When we were doing this before we never  
6 talked, we never got into the details of things  
7 like assets and liabilities, how we were going to  
8 transfer projects from customers. None of these  
9 things ever got addressed before. We couldn't  
10 even get that far in the kind of transition issues  
11 that were being discussed.

12 There are a lot of things, I would say  
13 mine fields, that we haven't even touched upon  
14 yet, that if anything from our prior experience  
15 we've learned is there will be something. There  
16 is always something that we have not figured out.  
17 And it has held up the process.

18 And I would suggest that when we start  
19 digging into those kinds of things, customer  
20 information, capital, investments that the  
21 utilities have made and how to transfer those  
22 things over, they're not going to be simple things  
23 to address.

24 And those might be additional comments  
25 that Peter Miller had offered up before.



1                   Again, trying to be quick here, I think  
2                   I'll stop there and look forward to working with  
3                   the Committee in trying to move this forward. And  
4                   we will be submitting written comments by Friday.  
5                   Thank you.

6                   PRESIDING MEMBER LAURIE: Thank you,  
7                   Frank. Questions?

8                   COMMISSIONER PERNELL: Do you have an  
9                   opinion on the contract versus regulatory issue?

10                  MR. SPASARO: Yes, I do. It kind of  
11                  goes along these lines: I'm more familiar with  
12                  what the regulatory model is than I am with what  
13                  the contract model is.

14                  If the contract model is based on what  
15                  I've been hearing about the PIER activity, I've  
16                  got concerns. I don't have -- I will admit I  
17                  don't have a lot of firsthand experience on it.  
18                  But I haven't heard anybody tell me that they  
19                  thought it's worked right.

20                  And the fixes that I'm hearing about  
21                  aren't giving me any confidence that it is going  
22                  to work right. So, I'm leaning towards what I  
23                  know does work.

24                  And the regulatory model has worked. I  
25                  understand that there's some issues about trying

1 to understand how it's going to work with the  
2 Energy Commission and the PUC. And those details  
3 need to be fleshed out.

4 But I would go along with the regulatory  
5 model based on what I know at this point.

6 PRESIDING MEMBER LAURIE: See, I look at  
7 the contract as something different. I don't  
8 think we're contracting with the managers, with  
9 the administrators for a product delivery. We're  
10 contracting for the service.

11 And, you know, those can be really easy.  
12 I don't care what the dollar figure is. The  
13 dollar figure is really irrelevant. Yeah, you get  
14 nervous when you see bigger numbers. But, the  
15 service isn't any different that you're  
16 performing.

17 And I think we really need to share  
18 thoughts about that. And my lawyers get nervous  
19 when I demand two- and three-page contracts. But,  
20 you know, if you put what you're trying to  
21 accomplish in English, I just don't see it being  
22 that complicated.

23 There's some analogies to PIER, but it's  
24 a different deal, in my view. So I remain  
25 optimistic. But, again, I think we need to talk

1       about that a lot.

2               MR. SPASARO: I would agree. I need to  
3       learn a lot more at this point, I'm just not that  
4       confident that it is a model.

5               MR. MATTHEWS: I want to respond to  
6       something you said, because I think you said it  
7       exceedingly well, which is the problem, and this  
8       has to do -- not that you said it well, but what  
9       you said -- this has to do with what's broken.

10              You said, with energy efficiency there's  
11      not a conflict between sales and energy  
12      efficiency, because you're going to do what's best  
13      for the customer.

14              And the question turns around. If  
15      you're using public goods charge money, in a  
16      competitive environment, to provide customer  
17      services that your competitor doesn't get, it  
18      creates a problem.

19              MR. SPASARO: Okay, I don't think we  
20      have time to debate it at this point.

21              PRESIDING MEMBER LAURIE: Thank you,  
22      sir, comments are appreciated.

23              Mr. Nelson.

24              MR. NELSON: Thank you, Commissioner.  
25      My name is William Nelson. I'm representing

1 Residential Energy Efficiency Clearing House. I'd  
2 just like to note for the record that the bulk of  
3 the hearing time today, not by intent, but it just  
4 worked out that way, was accorded to supporters of  
5 utility administration.

6 PRESIDING MEMBER LAURIE: We understand  
7 that, sir, and I already apologized, it's just the  
8 way it worked out. If you would have submitted  
9 your card first you would have been called on  
10 first. Can't help it.

11 MR. NELSON: Briefly I will address  
12 Commissioner Pernell has asked for conflict of  
13 interest examples.

14 Historically when the utilities operated  
15 the utility resource acquisition DSM programs,  
16 there was a very heavy cross-subsidization of  
17 ratepayer funds from residential classes to the  
18 commercial and industrial classes. They will  
19 justify it with certain calculations. We,  
20 however, still find that to have been a  
21 reprehensible conduct of the use of the moneys.

22 Secondly, we believe that the utilities  
23 are ten years behind the state of the art of what  
24 could be provided in terms of the bill  
25 presentation and the analysis of the utility

1 account history, when you compare them to the  
2 financial industry or the medical industry, their  
3 efforts pale.

4 Thirdly, I was involved with the market  
5 assessment and evaluation policy review recently  
6 in the ADAP before the Utilities Commission, and I  
7 examined approximately 40 market assessment and  
8 program evaluation contracts that were issued by  
9 the utility administrators, and my opinion is that  
10 those contracts were not competitively conducted.

11 And it is my firm belief that such  
12 program evaluators, and many of the constellation  
13 of contractors and consultants are closely held,  
14 and do not provide objective information, either  
15 the Utility Commission record or other agencies,  
16 generally.

17 Fourthly, the failure of the CBEE's  
18 board, itself, to have accomplished an RFP  
19 process, and many of the irregularities of the  
20 process that occurred during that board, which I  
21 do not have time to demonstrate, but of which  
22 there is now a record at the Commission, would  
23 demonstrate that that board was bent willingly,  
24 unwillingly. They could not contend with the  
25 forces of utility interests and economic

1 influence.

2 More importantly, the benchmark  
3 decision, 9702014, as it's foundation claimed that  
4 there was a fundamental conflict of interest  
5 between the revenue requirements of the utility  
6 and the revenue reduction of energy efficiency  
7 program.

8 Notwithstanding Ms. Whiting's reference,  
9 I do not believe the Utilities Commission has  
10 fundamentally changed that view.

11 There continues to be commingling of the  
12 public purpose funds by the utilities with their  
13 other functions. They are not moving quickly  
14 towards clearing up that issue.

15 And lastly, in this respect, I would  
16 just point to the tenacity with which utility  
17 administrators dog this issue. When you look at  
18 all the other issues in restructuring, why do they  
19 dog this issue so much? And I would say basically  
20 it's the dog in the manger mode of they do not  
21 want other economic entities conducting these  
22 programs for a whole variety of reasons.

23 I would take strong issue -- let me just  
24 say the other major issue I wanted to address, I  
25 believe that the report, and I wanted to give due

1 credit and say a number of things. I believe  
2 there was an attempt to recognize a number of  
3 issues by the report, and I think it did so.

4 I think that the analysis was uneven and  
5 unbalanced. And I concur with the number of  
6 commenters in that respect.

7 However, on the question of the powers  
8 of the two agencies, Utilities Commission and the  
9 Energy Commission, and now you've begun to develop  
10 the issues in terms of this contract model and  
11 regulatory model.

12 I believe that you have a fundamental  
13 misapprehension of just how deeply the historical  
14 powers basis and the legal basis of those powers  
15 run.

16 The idea that somehow the CEC can  
17 instantly acquire the competence and authority to  
18 regulate monopoly distribution utilities through a  
19 few sentences in law that's going to just simply  
20 transfer these programs, I think, is a myth.

21 Contracting with a monopoly is a very  
22 special thing, and it's going to be -- it would be  
23 quite a unique exercise for you to undertake. It  
24 is not like contracting to have a house built, or  
25 more simpler contracts.

1                   I would argue, and I am not expert at  
2                   this, but I doubt very much that unless there is  
3                   extensive rewriting of sections of the utility  
4                   code, you may even have to go down to the  
5                   constitutional level, because the Utilities  
6                   Commission is, in fact, a constitutional agency.

7                   You're going to have great difficulty  
8                   obtaining the authority on an open-ended basis, I  
9                   want to make that caveat, to contract with  
10                  utilities. I think it may be possible, and in a  
11                  previous recommendation I recommended that an  
12                  extension period be possible. Not in the fashion  
13                  it's been recommended, that a bidding scheme be  
14                  set up and somehow the utilities have bid against  
15                  each other. I believe that would be a sham scheme  
16                  in any event, because I believe there's only one  
17                  utility that is positioned to even approach that  
18                  scheme.

19                  But what I would say is this, you could  
20                  extend, if you get express -- here's the legal  
21                  hinge point that I would offer, and that may be  
22                  helpful in discussing this.

23                  You could extend the contracts to the  
24                  UDCs for whatever programs or projects you chose  
25                  to for a one-year or two-year period, if that is



1       expressly called out in the legislation. You may  
2       be able to walk that through for such a brief  
3       transition period.

4               If you try to claim an open-ended  
5       authority to begin regulating monopoly  
6       distribution utilities services in this area,  
7       that's a Pandora's Box in terms of the powers.  
8       And I do not think will be resolved.

9               In closing, just let me say, I will  
10      continue to work with you as much as I can. I  
11      sense that you -- and I had a number of other  
12      points to point out and try to provide  
13      constructive support, but they, in fact, exist in  
14      my previous recommendations from the other  
15      workshops.

16              But I strongly believe that you're  
17      risking legal failure, loss of credibility, and  
18      loss of momentum if you begin to ship in some of  
19      the kinds of proposals and the assumption of  
20      powers.

21              I would continue to urge you to take a  
22      close look at the split charge mechanism where by  
23      the Public Utilities Commission will continue to  
24      regulate the UDCs conducting certain reliability  
25      and energy efficiency services on the T&E side of

1 the meter.

2 And that the other split charge be  
3 levied on the energy use portion of it, and that  
4 this Commission go forward with trust accounts  
5 with a competitive scheme for offering those  
6 services.

7 I also want to say I appreciate CMUA has  
8 been engaged on the issue. I believe that a  
9 uniform charge is important. I believe they are  
10 maybe shying from it because they recognize that  
11 it will accrue a certain legal meaning, if there  
12 is a statewide uniform charge, which I strongly  
13 support.

14 I also strongly support approximately  
15 one-quarter mill per kilowatt hour being used on a  
16 dedicated basis to local jurisdictions and  
17 regional energy offices.

18 Thank you very much.

19 PRESIDING MEMBER LAURIE: Thank you, Mr.  
20 Nelson. Comments are appreciated.

21 Mr. Berlin, please.

22 MR. BERLIN: Thank you, Commissioners.  
23 I'm Greg Berlin with Southern California Edison.  
24 I'm here speaking today for Gene Rodriguez who  
25 initially planned to be here. He's our director

1 of energy efficiency, and was called back to  
2 Rosemead this morning.

3 But I think it's important that you hear  
4 from all of us, and since we're running out of  
5 time I'll keep my comments very short.

6 First, you know, I attended most of the  
7 workshops and I would like to recognize the work  
8 staff did, and I thought they did a really good  
9 job of conducting the workshops. It was a very  
10 positive environment.

11 Basically we'll provide our written  
12 comments this Friday. They'll have more detail.  
13 But in general, we would just like to reaffirm  
14 what you already heard from the other utilities,  
15 that we do have concerns with some areas of the  
16 report that Edison wouldn't support.

17 And those areas, the major ones would be  
18 the statewide administration, a lot of the major  
19 changes that are proposed over a short period of  
20 time. And we also had some concern with the  
21 funding tables. I think there needs to be a  
22 little more detail or some clarity in those  
23 tables.

24 Also, I don't see the conflict of  
25 interest as a major issue. And my experience in

1 the energy efficiency area, I haven't really come  
2 across that.

3 The other thing I would only add is that  
4 customer satisfaction is also a concern of ours.  
5 And I think if you, you know, go one route looking  
6 at, you know, focusing on increased sales and  
7 ignore the customer, that that would also hurt the  
8 company.

9 So, I think it's not, at least from what  
10 I've seen, it's not that big of an issue.

11 And that's about all I have to say.

12 MR. MATTHEWS: I imagine we have the  
13 same set of questions for you we had for others,  
14 but --

15 MR. BERLIN: Probably the same set of  
16 answers.

17 MR. MATTHEWS: -- I had hoped to get  
18 ahold of Gene before we got to this hearing and I  
19 hadn't.

20 One of the questions I had, would SCE be  
21 willing to bid on a statewide program if that's  
22 the way it turned out?

23 MR. BERLIN: I don't know, if that's the  
24 way it turned out. I know, you know, we're  
25 opposed to that concept.

1 MR. MATTHEWS: I know that.

2 (Laughter.)

3 MR. BERLIN: So I wouldn't close the  
4 door on that, but it wouldn't be our preference.

5 PRESIDING MEMBER LAURIE: Any other  
6 questions? Thank you, sir.

7 MR. BERLIN: Thank you.

8 PRESIDING MEMBER LAURIE: Aspen Systems,  
9 please.

10 MR. MISURIELLO: My name is Harry  
11 Misuriello. I'm with Aspen Systems. We do energy  
12 efficiency program design, market transformation,  
13 program administration, and so forth.

14 And my comments today are limited on one  
15 very narrow, but I think very important, aspect of  
16 the staff proposal. And that is to specifically  
17 call out the innovative pilot scale initiatives on  
18 page 53. This is shown as a separate  
19 administrative box. And described on page 60 of  
20 the text.

21 I feel this is very important because  
22 one of the reasons we're all here in this room  
23 today is that we need to bring more new ideas and  
24 people into this process to provide and deliver  
25 energy efficiency services and products to

1 Californians.

2 This is especially important for a lot  
3 of hard-to-reach sectors, like small business,  
4 which creates most of the jobs in this wonderful  
5 state. And we need more ideas to foster the kind  
6 of marketplace competition that the Commissioners  
7 are seeking in these proceedings.

8 My own caveat, however, is that the  
9 funding for this program is only at about 6  
10 percent of the \$271 million that's been nominally  
11 allocated across those five administrative areas.

12 I would think to be effective and to get  
13 the kind of creativity and bring in the new faces  
14 and so forth, that it ought to be up around 10 to  
15 12 percent of the budget.

16 This would allow lots of organizations  
17 like state and local governments, nonprofits,  
18 creative engineering firms, technology companies  
19 and so forth, to all contribute in their own way  
20 to this overall problem, and actually accomplish  
21 some of this market transformation that we've been  
22 talking about for several years.

23 I also feel it's important to raise that  
24 budget, especially if it's supposed to be  
25 stretched to cover the emerging technologies that

1       have been suggested earlier today.

2               So I would urge the Commissioners and  
3       staff to please revisit this important area of the  
4       program, and reconsider the funding.

5               Thank you very much.

6               PRESIDING MEMBER LAURIE: Thank you, --

7               MS. TEN HOPE: I just have one question.

8               PRESIDING MEMBER LAURIE: Question.

9               MS. TEN HOPE: Commissioner Pernell had  
10       earlier asked about if the utilities weren't doing  
11       administration who would. And in a presentation  
12       that we had at the last hearing they were talking  
13       about who some of the potential bidders were, I  
14       believe in Wisconsin, and I think Aspen Systems  
15       was mentioned.

16               I just wanted to throw that out there in  
17       terms of, you know, who -- would you be a  
18       potential bidder? What, you know, I'm just  
19       getting -- maybe that's an awkward question to  
20       ask, but to see what the world looks like for  
21       potential --

22               MR. MISURIELLO: Well, everybody will  
23       bid on it. If you put an RFP out you'll certainly  
24       get lots of bids. Whether or not the bidders can  
25       pull off the job is a different story.

1                   There's a difference between -- like our  
2                   company is a \$100 million a year company. We're  
3                   big by consulting firm standards. We're tiny  
4                   compared by other standards. The utilities in the  
5                   state run, you know, \$9, \$10, \$11 million a year,  
6                   and you're asking them to administer \$200 million  
7                   worth of projects. That's well within their  
8                   financial wherewithal.

9                   I think that the comment Mike Rufo made  
10                  earlier that if you did put a lot of these program  
11                  areas out to bid you would see gigantic consulting  
12                  teams being brought to bear on this particular  
13                  problem.

14                 After 25, almost 30 years in the  
15                 consulting business, I don't know if that's the  
16                 most efficient way to do that. There's a  
17                 difference between bringing, you know, one  
18                 engineer in for 1000 hours, or 1000 engineers in  
19                 for one hour. If you get my message.

20                 It may not be the most efficient way to  
21                 go. I think a lot of it depends on the scale and  
22                 scope of the project.

23                 For example, the statewide lighting and  
24                 appliance program probably runs about \$60 million  
25                 over the couple years of that contract. That's



1 something that's well within the range of a  
2 private sector firm or a small firm, smaller firm  
3 to handle.

4 And that would fit in with one of the  
5 other proposals to probably stagger the bidding  
6 and implementation of alternative administrators,  
7 either in one program area or pieces of separate  
8 program areas.

9 I think Mike Rufo made that suggestion,  
10 as well. And I think that was pretty reasonable.  
11 But you always get bidders, whether or not they  
12 deliver the goods is a different story.

13 MS. TEN HOPE: Thanks.

14 MR. MISURIELLO: Thank you, sir.

15 PRESIDING MEMBER LAURIE: Thank you.

16 Anybody else like to offer comment?

17 Mr. Sugar, next steps, please.

18 MR. SUGAR: The next step is we turn  
19 this over to the Committee.

20 (Laughter.)

21 MR. SUGAR: And Don Schwartz isn't here,  
22 but we're packaging him up and sending him down.  
23 Now, we're available to assist in analysis that  
24 you need, and assist the Committee in writing.

25 I believe the Committee draft is due out

1 December 5th. Around there, in order to be  
2 available in time for the agenda for the December  
3 15th business meeting. So that is our next  
4 target.

5 COMMISSIONER PERNELL: And will you  
6 include the written comments that will be in by  
7 Friday to us in your analysis?

8 MR. SUGAR: Yes.

9 COMMISSIONER PERNELL: So that nothing  
10 gets left out of this.

11 MR. SUGAR: Nothing gets left out. All  
12 the comments which we receive. If parties want to  
13 send comments to the email addresses that we've  
14 set up, and we'll insure that the Committee gets  
15 those comments and summaries, so that cuts down a  
16 little bit on the legwork you have to do.

17 PRESIDING MEMBER LAURIE: Is there  
18 another Commission meeting after the 15th, or is  
19 that the last meeting of the year?

20 MR. SUGAR: I believe that's the last  
21 meeting of the year.

22 PRESIDING MEMBER LAURIE: I thought we  
23 were trying to leave room for a second meeting.

24 MR. ABELSON: We talked about the  
25 possibility of there being a special meeting if

1           necessary, and there was room for that.

2                       PRESIDING MEMBER LAURIE:   Okay, well,  
3           it's going to be tough.

4                       COMMISSIONER PERNELL:   We're all going  
5           to be up for Y2K, so --

6                       (Laughter.)

7                       PRESIDING MEMBER LAURIE:   Yeah, you  
8           won't be able to find us anyway.

9                       Ladies and gentlemen, excellent meeting.  
10          We very much deeply respect your input.   And we  
11          thank you for that.

12                       And we'll look forward to your  
13          continuing input.   Thank you very much.

14                       (Whereupon, at 4:05 p.m., the workshop  
15          was adjourned.)

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## CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Committee Workshop; that it was  
thereafter transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
Workshop, nor in any way interested in the outcome  
of said Workshop.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 19th day of November, 1999.

DEBI BAKER

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